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ABSTRACT

This publication was developed by the Cincinnati (Ohio) Public Schools for use as a resource in adult basic education classes. It presents, in simple format, the basic legal rights of citizens of the United States and points out legal problem areas that average adults may encounter in daily life. The book is organized into nine parts containing 2 to 11 chapters each. These nine parts cover the following topics: introduction to legal terminology and procedures, contracts, business transactions (purchases, sales, warranties, credit cards, buying an automobile, borrowing money), debtor and creditor rights, real estate, insurance, landlord and tenant relationships, family law, and liability. Each chapter contains information sections followed by questions and problems. A list of names, addresses, and phone numbers of agencies and organizations that aid consumers completes the publication. (KC)

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A LEGAL HANDBOOK

CINCINNATI PUBLIC SCHOOLS
DEPARTMENT OF STUDENT SERVICES
CONTINUING EDUCATION BRANCH
ADULT BASIC EDUCATION
STAFF DEVELOPMENT PROJECT

1980

CE 035 073

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CINCINNATI PUBLIC SCHOOLS
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CONTINUING EDUCATION BRANCH
ADULT BASIC EDUCATION
STAFF DEVELOPMENT PROJECT

Introduction

This publication has been developed by the Adult Educators of the Cincinnati Public Schools. The Adult Basic Education (ABE) Staff Development Project was the source of funds. The original manuscript became the property of the Continuing Education Branch of the Cincinnati Public Schools over ten years ago. This was retrieved from storage, after it underwent extensive and critical review by a legal consultant who updated and edited the copy as part of the project. The consultant then presented the current edition to a group of ABE teachers in workshop sessions. The group evaluated a cr ss section of pages to determine readability levels of contents. Currently teacher made adult learning activities are being developed as part of the ABE Staff Development Project using this publication as the basic resource.

Walter R. Lund, Director, Continuing Education Branch furnished leadership for all the project activities related to this publication. James V. Gillen served as Project Supervisor. Ellen Klimon, served as the legal consultant assigned to this activity. Annease Comer was the teacher editing team leader for the manuscript. Catherine C. Wolters was the Coordinating Teacher for the project.

This publication will not produce "instant lawyers" among adult learners. The objective is to present, in simple format, the basic legal rights of citizens of the United States of America. It points up legal problem areas for average adult learner concerns which may be included in daily encounters. It will be used as resource material in local ABE classes.

Dr. James N. Jacobs
Superintendant

Dr. Willis Holloway
Assistant Superintendant

A Legal Handbook For The Layman was prepared pursuant to project goals and activities which are funded by the U.S. Office of Education, Department of Health, Education and Welfare through the State of Ohio, Department of Education, Federal Assistance Division. The opinions and points of view expressed in the above material, however, do not necessarily reflect the position of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred. Adult Basic Education Staff Development Project Number 036A80-SD

A LEGAL HANDBOOK FOR THE LAYMAN

CINCINNATI PUBLIC SCHOOLS
DEPARTMENT OF STUDENT SERVICES
CONTINUING EDUCATION BRANCH
ADULT BASIC EDUCATION
STAFF DEVELOPMENT PROJECT
1980

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PART I INTRODUCTION TO LEGAL TERMINOLOGY AND PROCEDURE

I. BASIC LEGAL TERMINOLOGY

Introduction. In order to understand "the law" there are certain basic legal terms which must be known and understood. The following material will give a foundation for the remainder of the course.

The Legal System. Every organized society must have a legal system in order for it to function. A legal system is the collection of all the laws of a particular society and their application and enforcement.

A LAW. A law is the basic ingredient of every legal system. It is a standard or rule of conduct set forth by a society as a whole to govern members of the society in their daily social and business affairs.

A COURT. Laws must be applied, administered, and enforced if they are to be effective, and the courts perform this task. A court is the governmental body which enforces and administers to disputes the standard and rules of conduct set forth by society to govern itself.

Different Types Of Courts.

A Mayor's Court. Some states authorize the mayor of a town to hear minor matters involving his community, such as traffic violations, disturbing the peace, and other like minor matters. Any case heard in a mayor's court is always heard before the mayor himself as he is not authorized to conduct a jury trial. In certain cases a case may be removed from a mayor's court if a jury trial is desired. A mayor's court is the lowest form of court that exists in most states as the mayor is not trained in the law but is just like the average person in his knowledge of the law.

Specialized Courts. Police court, traffic court and small claims court are petty or "inferior" courts and are not generally courts of record (that means they do not make a record of the proceedings). They make no detailed record of the proceedings beyond the identification of parties, lawyers and disposition of the case. You should, however, be aware of Small Claims Court. The procedure (O.R.C. & 1925) is rather informal and its purpose is to allow the average citizen to bring before the Referee (usually an attorney) any matter of claim he may have. There is a limit of $300. The losing party may appeal to the next level of court (municipal court) where there would be a new trial. The procedure in Small Claims Court is simple. The plaintiff simply goes to the Courthouse and fills out a Complaint stating his claim against the defendant and the remedy he is seeking. He pays a filing fee and a fee for service on the defendant. A date is assigned and on that day all parties, their witnesses and their evidence must be presented to the court. No formal rules of evidence are followed. Each side has a chance to explain his position and then the referee renders a judgment which is binding.

For example, if you were involved in a minor car accident and the other driver was at fault but had no insurance, you can file a claim in Small Claims Court (as long as the amount of damages you are seeking is less than $300.). Filing in Small Claims Court has two advantages for an individual. First, the cases usually are heard in a matter of weeks (as opposed to months or years in the other courts). Second, and individual does not have to be represented by an attorney (thus saving the costs of legal counsel).

The Trial Court. The definition and purpose of a trial court is found in its' name -- the trial of cases. Trial Courts are the foundation of our legal system as this is where a lawsuit begins or a criminal matter is tried. It is in the trial court where the judge, jury, parties to the dispute, and the witnesses meet to settle the matter in dispute, or in the case of a criminal matter, to decide whether or not the accused party has committed a crime.

An Appellate Court. An appellate court is more commonly known as a court of appeals. The work of an appellate court is limited almost solely to reviewing decisions made in the trial court. The appellate court inspects and reviews the work and decisions made in the trail court, and determines whether or not anything was done in the course of the trial which caused a wrong decision to be made. If the appellate court determines that an error was made in the trial court it will reverse the trial court.

The Supreme Court. Oftentimes the supreme court is referred to as the "court of last resort", the reason being that the supreme court is the last court to which a case can be taken for review. If the supreme court determines that no error was committed in the trial of a particular case, the decision in the trial court then becomes final.

Illustration Of A Court System.

Illustration number one below shows the structure of most state's court system from the lowest to the highest court in the system.

The structure of a state's court system:

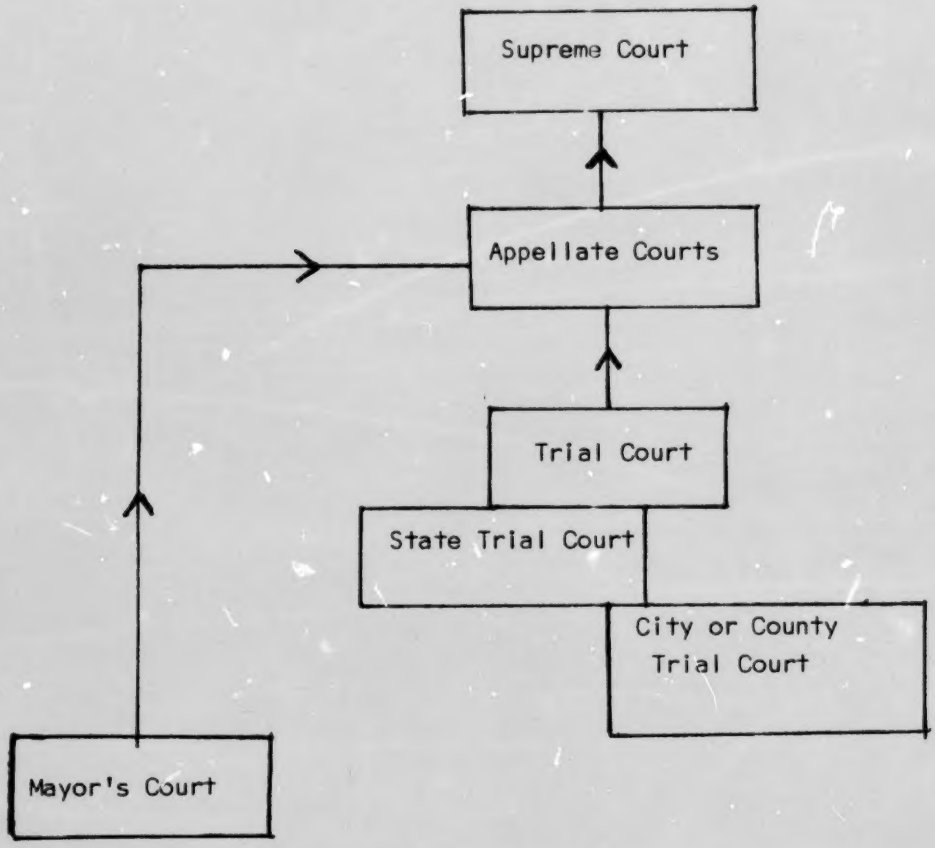

Illustration No. 1

The Lawsuit. The lawsuit is the institution of a court proceeding for the purpose of settling a dispute between two or more private parties, or the determination of whether or not a party or parties have committed a crime.

Parties To A Lawsuit.

The Plaintiff. The plaintiff is the party who institutes the lawsuit and starts the court's machinery into action. It is the plaintiff who says that he has been wronged, and that he is entitled to the benefit of the law.

The Defendant. The defendant is the party accused by the plaintiff of having committed a wrong for which the plaintiff has a legal cause of action. In a criminal case the defendant is the party accused of committing a crime.

The Judge And His Function. The judge is the person who controls what happens in the courtroom. During the trial of a case he decides all questions of law which arise and rules accordingly. At the end of all the testimony in the case, the judge instructs the jury as to what law applies to the facts before the jury so that the jury can decide who should win based upon what the law is.

The Jury And Its Function. The jury's role in the trial of a lawsuit is to decide all questions of fact and to apply the law that the judge gives them to the facts, thus determining who should win the case. A jury must decide such questions as, how did the automobile accident occur, did the contractor use the proper standard of care in building the bridge that collapsed, was a crime committed, to name a few.

The Trial. A trial is the presentation in open court of all versions of a dispute by the parties involved and their witnesses. After all versions to the dispute have been presented, the jury, or the judge if there is not a jury, decides who should win the lawsuit.

How A Trial Is Conducted. The normal procedure for the trial of a dispute is to first select a jury, if a jury is desired. In every case, except for some minor criminal charges, a party has the right to have a jury hear his case.

Upon the selection of the jury, each side makes a brief statement to the jury, telling them what they expect the testimony to be in the case and why their side should win. After the opening statements have been completed, the plaintiff presents his claim to the judge and jury through his and his witnesses' testimony. Upon the completion of plaintiff's version of the dispute, the defendant presents his side of the case to the judge and jury through his and his witnesses' testimony. At the close of the defendant's version of the case, the plaintiff once again has the opportunity to present evidence to rebut anything that the defendant might have presented which would defeat his claim.

Once all of the testimony and evidence has been presented, both sides again make statements to the jury as to what the evidence showed, what law should be applied, and why his side should win. At this point, the jury goes to the jury-room, out of the presence of both sides and the court, to decide who should win. Upon deciding who should win, the jury enters what is called a judgment for the winner.

The Judgment. A judgment is the decision rendered by a jury, or if there is not a jury, by the judge as to who wins the lawsuit. Included in the judgment, if the plaintiff wins, is the amount the defendant will have to pay the plaintiff for his damages. If the defendant wins, however, the judgment ordinarily does not contain a money award as the defendant is not the one claiming damages.

A person against whom a money judgment has been taken is responsible for that amount of money to whomever has the judgment.

Illustration Of A Trial.

The below illustration depicts a trial from the selection of the jury through judgment.

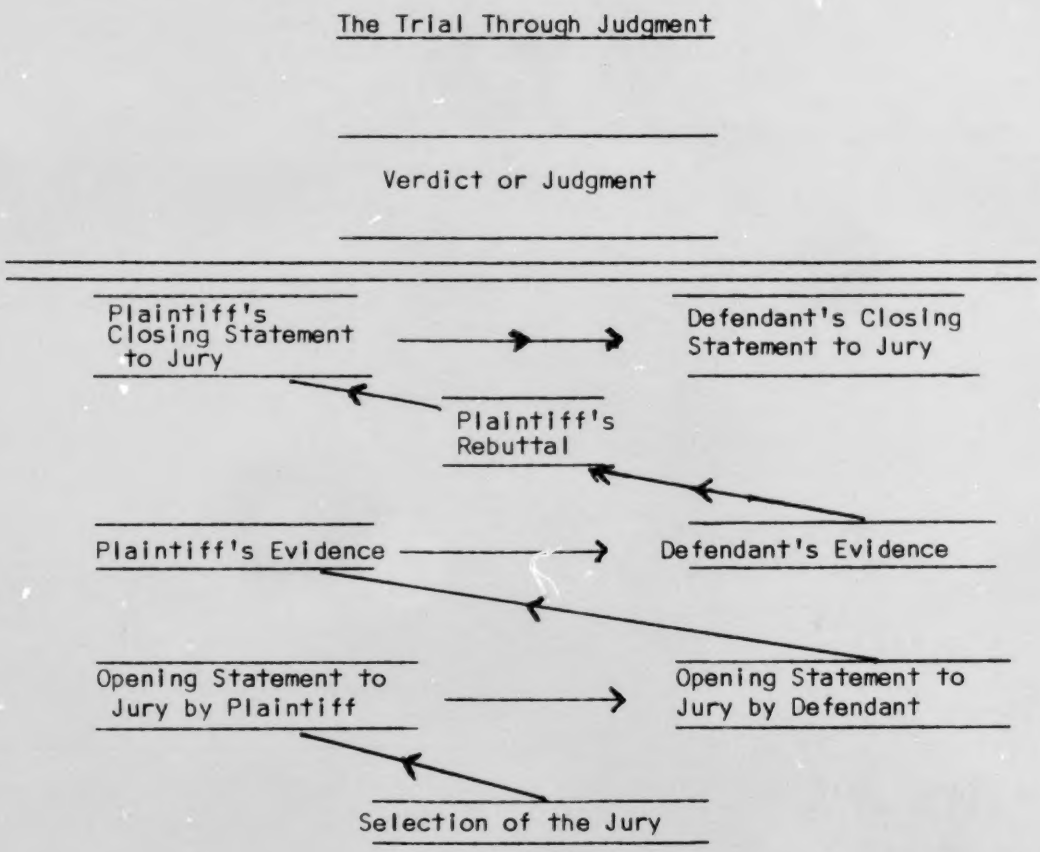

Illustration No. 2

A Verdict. A verdict is the decision rendered by a jury, or if there is not a jury, by the judge in a criminal case. A verdict is either guilty or innocent.

Different Forms Of Judgments.

A Confessed Judgment. One form of a confessed judgment is where a party who has been sued goes into open court and admits he is liable and should lose. Upon admitting that he is liable and should lose, the court will give a judgment to the plaintiff.

Another method whereby a confessed judgment may be obtained is where a party agrees in writing as a part of a contract to allow the other party to go into court and take a judgment against him if he does not keep the terms of the agreement.

The agreement allowing one party to go into court and take a judgment against another is called a warrant of attorney. However, under Ohio law, a warrant of attorney to confess judgment contained in any instrument arising out of a consumer loan or consumer transaction in INVALID. Therefore, a court cannot render a judgment based upon such an agreement contained in a consumer contract. (O.R.C. & 2323.13)

In contracts between persons of equal bargaining power, two merchants for example, a warrant of attorney to confess judgment is invalid unless there appears on the instrument a specific warning of the agreement prescribed by Ohio Law.

A Default Judgment. A default judgment is granted in a case where the party sued does nothing to prevent the plaintiff from taking a judgment against him. For example:

Mr. Jones while driving his automobile, runs a red light and strikes Mr. Smith's automobile in the side. Mr. Jones does not have insurance and refuses to fix Mr. Smith's automobile, so Mr. Smith sues Mr. Jones for the

damage done to his automobile. Mr. Jones upon receiving the papers from the court informing him that he has been sued, throws them away and does not appear in court on the date stated in the papers that his case will come up in court. On the date that Mr. Jones was supposed to be in court, Mr. Smith is granted a judgment by the court. A court will grant a judgment in a lawsuit when it is not defended, and this is known as a default judgment.

Judgment By The Judge. If the parties to a lawsuit so choose, they can have their dispute heard by a judge alone, rather than by a jury. If the judge hears the case alone, he decides who should win, and enters a judgment accordingly.

Judgment By A Jury. When a dispute between private parties is heard by a jury, the jury decides who should win, and they enter judgment accordingly.

A Civil Lawsuit. A civil lawsuit or action is a dispute or claim between private parties, and may or may not involve a governmental agency. A civil action is where one party sues another stating that he has a claim or has beeninjured by the other party for which the plaintiff should receive money damages. The following are some examples of civil lawsuits:

1. A. sues B. for the damage that B. did to A.'s automobile when B. ran his automobile into the rear of A.'s automobile.
2. A. hits B. in the mouth breaking one of B.'s teeth.
   B. sues A. for the cost of having his tooth fixed.
3. A. sells B. six rooms of furniture for one thousand dollars, payable twenty dollars per week. B. pays for ten weeks and then does not pay anymore. A. sues B. for the balance that B. owes A.

A Criminal Action. A criminal action is a lawsuit brought through a governmental agency when someone has been accused of breaking a law for which that person may be fined or imprisoned. Examples of criminal actions are:

1. Murder
2. Child Neglect
3. Rape
4. Assault and Battery
5. Robbery

A Case. When the term "case" is used, it may refer to one of three things:

1. Plaintiff's Case. The plaintiff's case is the claim of the party instituting the lawsuit.
2. Defendant's Case. The defendant's case is the reason why the defendant says the plaintiff's claim should be denied.
3. The Whole Case. The whole case is putting both the plaintiff's and defendant's case together and viewing the lawsuit as a whole rather than two halves.

Questions And Problems.

1. What is a law?
2. The party who institutes the lawsuit is: (a) the defendant; (b) the judge; (c) the jury; (d) the plaintiff.
3. The court that is the foundation of our court system is; (a) the supreme court; (b) the mayor's court; (c) the trial court; (d) the appellate court.
4. A lawsuit brought for injuries out of an automobile accident case is an example of: (a) a civil lawsuit; or., (b) a criminal lawsuit.
5. What is a default judgment?

II. INSTITUTION AND TRIAL OF THE CIVIL LAWSUIT.

Introduction. The civil lawsuit, as we have already seen, is a legal proceeding between two or more private individuals or companies who have a dispute that they want decided by a court in order to determine who is right. A court's machinery, however, does not go into action by itself. Something has to be done by the plaintiff to make the court aware of the dispute. The method for making the court aware of the dispute is the filing with the court what is known as a complaint.

The Complaint. A civil lawsuit is started by filing in the appropriate court, papers which set forth the reasons for commencing the action and what is wanted by the party filing the papers. Usually what is wanted is money.

The party filing the complaint is the plaintiff.

The following is an example of a complaint:

***

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

COVER-ALL INSURANCE CO., Cincinnati, Ohio	:	NO. 150
and	:	
Mr. Y.,		
and	:	COMPLAINT
Mr. T., Plaintiffs	:	
-vs-	:	
Mr. F., Defendant	:	

1. Plaintiff, Cover-all Insurance Co., hereinafter called Insurer, says that it is and was at all times herein mentioned, a corporation engaged in the business of writing and selling automobile insurance, duly licensed to do so by the State of Ohio; that it had in full force and effect a certain policy of insurance whereby it agreed for a valuable consideration to insure against loss or damage certain property owned by Plaintiff, Mr. Y., hereinafter called Insured, to-wit: a 1967 Plymouth automobile; and Plaintiff, Mr. T., hereinafter called Insured, to-wit: a 1963 Pontiac automobile.

2. Plaintiffs say that on or about December 19, 1968, at 1:05 AM, Insureds' said automobiles which were then being operated by said Insureds respectively, and that of defendant, a 1959 Oldsmobile sedan, being then and there operated by defendant, were involved in collision.

3. Plaintiffs say that said collision was a direct and proximate result of defendant's negligence in that defendant, pulling out of a parking space on parking lot at Ross & Carthage Avenues, said parking lot belonging to Fisher Body Division in Norwood, skidded to the right and struck Insured, Mr. Y.'s vehicle, causing it to skid into parked automobile of Insured, Mr. T.

4. Plaintiffs say that as a direct and proximate result of defendant's aforesaid negligence, said Insured, Mr. Y.'s automobile was damaged, the reasonable difference in value thereof before and after said collision being $1465.50.

5. Insurer, in accordance with the terms of said policy of insurance, was required to and did pay to or on behalf of said insured, Mr. Y., the sum of $1365.50, for which amount said insured has assigned to insurer his claim against defendant, and insurer is subrogated to the rights of said insured and is entitled to judgment against defendant for said amount.

6. Said insured, Mr. Y., says that his said automobile was damaged in the amount of $1465.50, of which insurer has paid $1365.50, all as hereinabove stated, and that said insured, therefore, is entitled to judgment against defendant for $100.00.

7. Plaintiffs further state that as a direct and proximate result of defendant's aforesaid negligence, insured, Mr. T.'s automobile was damaged, the reasonable difference in value thereof before and after said collision being $407.91.

8. Insurer, in accordance with the terms of said policy of insurance, was required to and did pay to or on behalf of said insured, Mr. T., the sum of $407.91, for which amount said insured has assigned to insurer his claim against defendant and insurer is subrogated to the rights of said insured and is entitled to judgment against defendant for said amount.

WHEREFORE, insurer prays that it may have judgment against defendant in accordance with the above for $1773.41: and insured, Mr. Y., prays that he may have judgment against defendant in accordance with the above for $100.00 and costs, for a total of $1873.41 and costs.

_____

Attorney For Plaintiff

PRAECIPE

TO THE CLERK:

Please issue summons on the within-named defendant, returnable according to law. Endorse: "Action for money only, amount claimed $1873.41 and costs."

_____

Attorney For Plaintiff

*** This is only one type of a complaint, and one should not think that this is the only type of paper which will institute a lawsuit.

The Answer. Once a lawsuit is instituted by the filing of the complaint, the party being sued, known as the defendant, must act or a default judgment will be taken against him. In order to insure himself a trail, the defendant must also file papers with the court denying what is stated in the complaint. These papers are called an answer. The answer sets forth facts as to why the plaintiff should not win the lawsuit.

The following is an example of an answer:

***

HAMILTON COUNTY MUNICIPAL COURT

HAMILTON COUNTY, OHIO

COVER-ALL INSURANCE CO., :

and NO. 150

Mr. Y., :

and

Mr. T., : Answer

Plaintiffs

-vs- :

Mr. F., :

Defendant

1. For answer to plaintiffs' petition filed herein, defendant admits that Cover-all Insurance Company is a corporation engaged in the business of writing and selling automobile insurance, duly licensed to do so by the State of Ohio; that it had in full force and effect certain policies of insurance whereby it agreed, for valuable consideration, to insure against loss or damage, certain properties owned by plaintiff, Mr. Y., to-wit: a 1967 Plymouth automobile; and plaintiff, Mr. T., to-wit: a 1963 Pontiac automobile.

2. Further, defendant admits that on or about December 19, 1968, at 1:05 AM, plaintiff's Mr. Y.'s, and defendant's automobile were involved in a collision.

3. Further answering, defendant specifically denies that said collision was a direct and proximate result of any of his negligence and further, he denies that he was pulling out of a parking space on a parking lot at Ross and Carthage Avenues, said parking lot belonging to Fisher Body in Norwood.

4. Further answering, defendant specifically denies that he was negligent in any manner causing any damage to Mr. Y.'s automobile or Mr. T.'s automobile.

5. Further answering, the petition, defendant denies each, all and singular, the allegations thereof which are not herein specifically admitted to be true.

WHEREFORE, defendant prays that plaintiff's petition be dismissed and he be granted his costs.

_____

Attorney For Defendant

*** This is only one type of an answer, and one should not think that this is the only type of answer to a complaint.

The Reply. If the defendant in his answer states a claim against the plaintiff, the plaintiff must answer this counterclaim. Thus, the party instituting the lawsuit, the plaintiff, must file an additional paper with the court denying the defendant's counterclaim. This paper is called a reply. A reply is necessary only when a counterclaim is made by the defendant or when the court orders it.

The following is an example of a reply:

*** HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

COVER-ALL INSURANCE CO.	:	
and	:	NO. 150
Mr. Y.,		
and	:	Reply
Mr. T.,	:	
Plaintiffs	:	
-vs-	:	
	:	
Mr. F.,		
Defendant	:	

For reply to defendant's counterclaim, plaintiffs deny all therein contained which is not previously herein admitted to be true.

WHEREFORE, plaintiffs pray that judgment be entered in accordance with their petition.

Attorney For Plaintiffs

*** This is only one type of a reply, and one should not think that this is the only type of reply to counterclaim.

The Counterclaim. Often a party who is being sued believes that the other party is the party in the wrong, and that he should be suing him, rather than being sued. The law therefore provides a means for the defendant to make his claim known and it is called a counterclaim. Essentially, a counterclaim is the same as a complaint, except, it is filed by the party being sued, or the defendant. Through the use of the counterclaim, all claims in a dispute are presented to the court for its decision, and it cuts down on the number of separate lawsuits and trials.

The following is an example of a counterclaim:

***

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

COVER-ALL INSURANCE CO.,	:	NO. 150
and	:	
Mr. Y.,	:	
and		
Mr. T.,	:	Counterclaim
Plaintiffs	:	
-vs-	:	
Mr. F.,		
Defendant	:	

1. Defendant says that on the 19th day of December, 1968, at about 1:00 AM, he was driving his 1959 Oldsmobile sedan in an eastwardly direction along an exit on parking lot at Ross and Carthage Avenues, said parking lot belonging to Fisher Body Division in Norwood, Ohio, and at the same time Mr. Y.., a plaintiff herein, was driving his 1967 Plymouth automobile in a northerly direction on an exit of the said parking lot at Ross and Carthage Avenues, in Norwood, Ohio, which latter motor vehicle was caused and permitted to collide with defendant's automobile, as a proximate result of the negligence of said Mr. Y., a plaintiff herein, in the following respects:

> In operating his automobile on said parking lot at a speed greater than would permit him to bring it to a stop within the assured clear distance ahead; and in driving his automobile to the left of the center of the roadway when approaching an intersection.

2. That as a proximate result of the negligence of Mr. Y., as aforesaid, defendant's automobile was damaged in the following respects:

> Defendant's right front fender was damaged all to defendant's damage in the sum of $125.00.

WHEREFORE, defendant prays for judgment against the plaintiff, Mr. Y., in the sum of $125.00 and his costs.

_____
Attorney For Defendant

PRAECIPE

TO THE CLERK:

Please issue summons on the within named plaintiff, Mr. &., returnable according to law. Endorse thereon: "Action for money only, amount claimed $125.00 and costs."

Attorney For Defendant

*** This is only one type of a counterclaim, and one should not think that this is the only type of counterclaim.

Pleading. All of the foregoing, the complaint, the answer, the reply, the counterclaim, are examples of pleadings. As the word pleading itself indicates, the paper filed pleads with the court to grant what is stated in it.

The Summons. The purpose of a summons is to notify a party that he is being sued, and that unless he files a defense against said suit or appear in court on a specified date a judgment will be granted against him.

The following is an example of a summons:

(RL 10.0)

***

Summons in 1st Class Cases in action for Money only. No. 150

STATE OF OHIO

: SS. To the Bailiff of the Hamilton County Municipal Court; GREETING:

HAMILTON COUNTY

You are commanded to notify

Mr. F. that he has been sued by Cover-all Insurance Co. and Mr. Y. and Mr. T. in the Hamilton County Municipal Court, and that unless, he file a statement of defense by the 22nd day of September A.D. 1969, the bill of particulars of said of said plaintiff against him filed in the Clerk's office of said Court, will be taken as true, and judgment rendered accordingly. Also that he appear in Room A of said court on the 24th day of September A.D. 1969 at 9 o'clock A.M.

TO THE BAILIFF:

You will make due return of this summons on the 8th day of September, A.D. 1969.

Witness my hand and seal of said Court at Hamilton County, this 3 day of Sept. A.D. 1969

Clerk of Courts

*** This is only one type of summons, and one should not think this to be the only type to exist.

Service Of The Summons. A party being sued may receive a summons in two different manners. First, the Sheriff may give the papers to the party being sued personally or another method is by leaving them at the party being sued's residence. In the case of personal service, it is sufficient if the sheriff merely touches the party being sued with the papers and then drops them.

A second method of serving papers used by municipal courts is to mail them by certified mail to the party being sued. When the return receipt is received, it is presumed that the party being sued got the papers. Ordinary mail may also be used under certain circumstances.

After The Pleadings, The Trial. After all of the pleadings have been filed so that the court understands what the dispute is about, the case is then set for trial. When the case comes on for trial, the procedure is the same as that described in section I. under the heading, "How A Trial Is Conducted."

Post Trial Procedure. Even after a judgment has been given by a jury, the case may not be over as there are several legal procedures which can be tried in order to pump new life into a case.

A Motion For A New Trial. A motion for a new trial is based upon the thought that something was done wrong in the course of the trial which harmed the case of the party that lost, and therefore, a fair trial was not had and the decision might be different if the case was tried again without error. A motion for a new trial is what its' name indicates - a request for another trail.

A Judgment Notwithstanding The Verdict. Even though a jury has made its' decision, it does not always mean that it has made the right decision. In a case where a jury has made a decision which is against the law that governs that particular case, the judge has the power to change the jury's judgment to comply with the law - this procedure is called a judgment notwithstanding the verdict.

An Appeal. If a party to a lawsuit is not satiffied with the results, and he is not granted either of the foregoing, he can always take the results to a higher court. In order for a higher court to reverse a judgment, it must be shown that an error was committed in the trial which led to an unjust result.

Questions And Problems.

1. A complaint is filed by: (a) the defendant; (b) the judge; (c) the plaintiff; (d) the sheriff.

2. What is a complaint?

3. What is an answer?

4. What is a counterclaim?

5. What is a summons?

111. INSTITUTION AND TRIAL OF THE CRIMINAL PROCEEDING.

Definition of Terms

Crime. A crime is an act or a failure to act forbidden by the society in which we live, which may be punishable by death, imprisonment, fine, or other penal sanctions.

Examples of crimes are:

a. Assault and Battery

b. Murder

c. Arson

d. Building Code Violations

Arrest. Once a crime has been committed, society requires that the person who committed the crime be removed from the streets. One of the main reasons for this is, if that particular person is allowed to remain free he might commit more crimes, and further, the legal authorities want to be sure that the party who committed the crime will not flee and escape the punishment which he deserves.

An arrest is a restraint of freedom, or being taken into custody and put into jail.

Methods of Arrest. The most apparent type of arrest is when a police officer catches someone in the act of committing a crime. However, a police officer may also make an arrest if he has a reasonable suspicion that someone has committed a crime.

A third method of arrest is when a private party swears to the proper leagal authority that a crime has been committed, and names the party who committed the crime. The police upon receiving the complaint filed with an affidavit arrests the party who was supposed to have committed the crime.

What is an Affidavit? When a private individual swears that a crime has been committed and wants the party arrested, he signs a paper to this effect called an affidavit.

A Misdemeanor. There are two major classifications of crimes, and the less serious offenses are classified in a group called misdemeanors. A misdemeanor in Ohio has been simply defined as an offense which requires a year or less imprisonment as punishment.

Some examples of misdemeanors are:

1. An assault and battery.
2. Abuse of family.
3. Most traffic offenses.

A Felony. Felonies are the second major classification of crimes, and it includes the more serious offenses. A felony may be defined as a crime which requires imprisonment for more than a year, or maybe even death, for punishment.

Some examples of a felony are:

1. Murder.
2. Rape.
3. Arson.
4. Burglary.
5. Failure to support a pregnant wife.

The Prosecutor And His Role. The prosecutor is the party hired by the state to set forth the evidence showing that a particular individual has committed a crime. The prosecutor tries the case for the community in which we live, for it is the community in which we live that requires a crime to be punished.

The Prosecution. The prosecution is the going forward by the state who requests that a particular individual be found guilty of committing a crime, and that he or she be punished in accordance with the seriousness of the crime if convicted.

Three Methods of Instituting A Criminal Action.

Arrest By A Police Officer. The most obvious method of instituting a criminal action, of course, is by a police officer arresting someone caught in the act of committing a crime, and then swearing to such on an affidavit. A police officer may also institute a criminal action on circumstantial evidence, where everything indicates that a particular individual committed a crime by swearing to such on an affidavit.

By A Private Individual. A criminal action may also be instituted by a private individual by the mere swearing to an affidavit saying that a particular party has committed a crime. A note of caution should be inserted at this point. If the party swearing to the fact that a crime has been committed is unable to prove that the party committed a crime, the swearing party may be sued for malicious prosecution.

Indictment By The Grand Jury. A third method of instituting a criminal proceeding exists, and it is greatly used, the indictment of the grand jury. The grand jury upon its' own motion may investigate a particular situation, and if it finds evidence of a crime being committed, it can have the party or parties responsible for committing the crime arrested and tried for the commission of the crime.

The Trial Of A Party Accused Of Committing A Crime. Basically the procedure for the trial of someone accused with a crime is the same as any other trial.

In the case of a felony, however, there is usually three added steps before the actual trial itself. First, there is a preliminary hearing to determine whether or not there is reasonable grounds for the bringing of the criminal action. If it is determined that reasonable grounds exist for the bringing of the action, the matter is then sent to the grand jury. The grand jury then makes an investigation of its' own to determine whether or not there is sufficient evidence to charge the accused with a crime. If the grand jury determines there is sufficient evidence to charge the accused with a crime, it then indicts the accused and sends the matter to the courts for arraignment. An arraignment is the appearance of the accused before a judge and entering a plea of guilty or not guilty to the charge. After the plea is entered the matter is then set for trial.

Post Trial Procedure. The post trial procedure in a criminal case is basically the same as in a civil case. The first step is always the filing of a motion for a new trial on the grounds that something was done in the course of the trial which harmed the case of the party convicted of committing the crime.

Then, there is always the appeal of the matter to a higher court in order to have the appeals court determine whether or not there was any error committed during the course of the trial which hurt defendant's case, or whether or not the right decision was given.

Questions And Problems.

1. What are the two major classifications of crimes?
2. What are the methods for instituting a criminal action?
3. What is the role of the prosecutor in the trial of a criminal case?
4. A burglary is a (a) misdemeanor; or (b) Felony ?
5. An assault and battery is a (a) misdemeanor; or (b) Felony ?

IV. YOUR CONSTITUTIONAL RIGHTS UPON BEING QUESTIONED ABOUT OR ARRESTED FOR A CRIME.

The Constitution of the United States guarantees each citizen of the United States certain rights upon being questioned about or arrested for a crime.

Basic Rights. The following rights are guaranteed to every citizen of the United States upon being questioned about or arrested for a crime:

1. A party does not have to say anything or answer any questions, he or she may remain silent, and such silence cannot be used against the accused upon being tried for the suspected crime. The only information a party is required to give a police officer is his name and address.
2. During any questioning by a police, a party may have an attorney present.
3. If the party cannot afford an attorney, one must be provided.
4. A party has the right to call an attorney upon being taken into custody.
5. A suspect has the right to know what he or she is being questioned for, or if the party is arrested, he or she has the right to know what he or she is charge with.
6. A party has the right to know that anything he says to the police may be used as evidence against him if he says anything that could be used in convicting the accused of a crime.

Other Rights Pertaining To Crimes.

Testifying Against Oneself. If a party has been arrested for supposedly committing a crime, upon the trial of the charge, the party accuse does not have to testify if he so choses. Further, upon the trial of a charge, the person accused does not have to answer any questions which

would help convict him or her of the charge.

Search Of A Person's Home. The only way a home or other premises can be searched is if the owner gives his permission or a search warrant is obtained which describes what the police are looking for on the premises. A possible exception to the foregoing is when the police are in hot pursuit of a party who is suspected of having just committed a crime, and the police are looking for some item used or taken in the criminal act.

Right To A Jury Trial. In practically every case where a person is charges with a crime, the accused has the right to have the case heard by a jury if he so desires. However, in every case, the accused must specifically request that his case be tried before a jury, or the accused will waive his right to the jury trial.

Waiver Of Your Rights. Unless a party exercises his constitutional rights, he or she will be deemed to have waived them. If an attorney is not requested, one cannot later say that they were denied one, or that they were prejudiced because they did not have one. The same is true for a jury trial. In each and every instance, a party must exercise his constitutional rights, or they will be forever waived.

Summary. A party being questioned about, or accused of, a crime has the right to remain silent; has the right to be informed that anything said by him may be used against him if the matter comes on for trial; has the right to call his attorney; has the right to have an attorney present during any questioning; has the right to have an attorney furnished if one cannot be afforded; and, every party has the right to know what he is being questioned about, or for what he has been arrested.

A party accused of a crime, in practically every case, has the right to a jury trial. A party's house cannot be searched unless he or she consents, or a search warrant is obtained describing what is being sought. A party is not required to testify against himself.

If you do not exercise your constitutional rights, you waive them.

Questions And Problems.

1. What are the six basic rights of a party being questioned about or accused of a crime?
2. Is a party required to testify against oneself?
3. How may a person's home be searched by the police?
4. Can one waive their constitutional rights?
5. Who is entitled to a jury trial?

V. THE DUAL COURT SYSTEM IN THE UNITED STATES.

Introduction. Every rule, regulation, or law is useless unless it is obeyed. A rule will not be obeyed unless there is a method of enforcing complaince with it. In the United States the courts are the enforcers and administrators of the law. The courts are the agency of the government which pumps life into the body of the law and makes it a living entity.

The United States is unique in that fifty-one separate court systems exists - the federal court system and fifty separate state court systems.

The Federal Court System.

Article III, Section 1, of the United States Constitution, provides: "The judicial powers of the United States shall be vested in one Supreme Court, and such inferior courts, as the Congress may from time to time ordain and establish." This section is the basis for the federal court system.

The federal court system is concerned only with enforcing and administering the Constitution and the laws enacted thereunder.

As the federal court system has developed, we find it looking like this today:

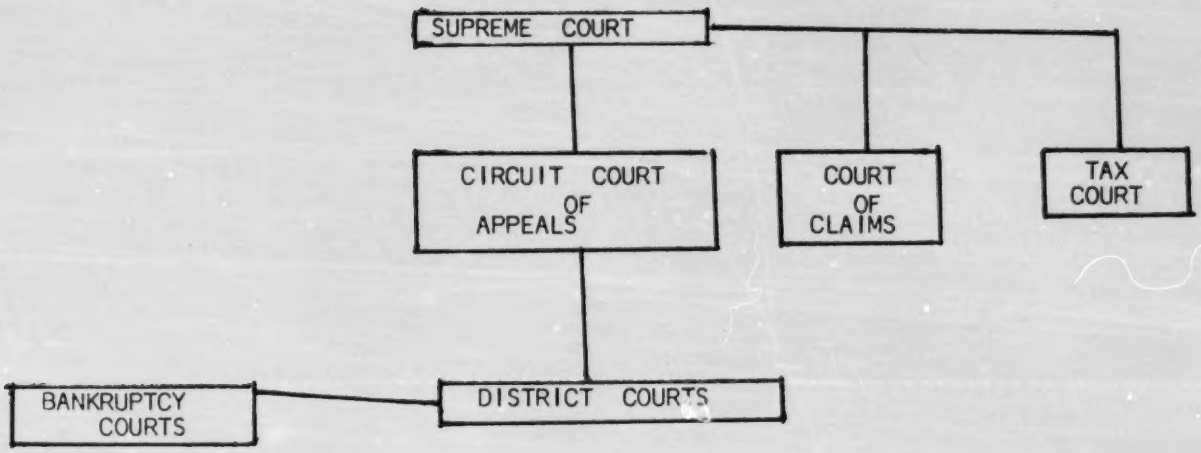

Illustration No. 4

The Fifty Different State Court Systems.

A state's court system is authorized by that particular state's constitution. Each state's system may be different, but for the most part they will be similar and patterned after the federal system. In Ohio, for example, the system is much the same as the federal system in that the lowest court is the trial court, the next highest court is the court of appeals, and the highest court is the supreme court.

Each state's court system is only concerned with enforcing and administering the law in that particular state. A court in one state has no power to enforce or administer the laws in another state.

The following is a typical example of a state's court system:

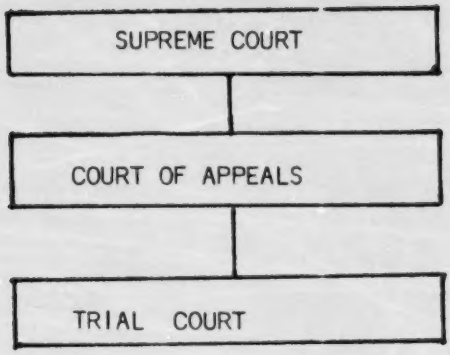

Illustration No. 5

Questions And Problems.

1. How many separate court systems exist in the United States?
2. What laws are enforced by the federal court system?
3. What is the highest court in the federal court system?
4. A state court system is concerned with enforcing what laws?
5. What agency of the government is concerned with the enforcement and administration of the law?

VI. SOURCES OF LAW IN THE UNITED STATES.

The United States Constitution. When the original thirteen colonies won their independence, each considered itself an independent country. Yet, each was closely connected with the others. For the most part, everyone spoke the same language, and each was dependent on the other commercially. At first a loosely formed confederation was tried, but this was soon found to be unworkable, unenforceable, and unable to meet the demands of the people. What the colonies wanted was something to bind and hold them together while still being able to maintain a separate recognizeable entity. On the fourth day of March, 1789, the United States Constitution took effect setting forth the "supreme law of the land." A new type of government was formed the likes of which the world had never seen.

The United States Constitution in reality sets up the machinery for a dual system of government. It gives a specific grant of power to the federal government, and reserves all others to the states. The federal powers are supreme, and the state's laws cannot conflict with the federal powers.

The following are a few examples of the powers given the federal government by the Constitution:

1. The power to establish a postal system.
2. The power to establish bankruptcy laws.
3. The power to establish an army and navy.
4. The power to establish a federal court system.
5. The power to establish a national currency.

Thus, the fundamental law in the United States is the Constitution, and it is the primary source for all laws in the United States.

Federal Statutes. The federal government also has the right to enact laws which are necessary to carry out the provisions of the Constitution, and this is what gives the Congress of the United States the right to enact laws called federal statutes. These federal statutes must be in complete harmony with the Constitution and carry out its provisions or they will be declared unconstitutional.

The States' Constitutions. Those powers which are not specifically granted to the federal government are reserved to the states. This gives the states the right to form a constitution and enact any laws which are not in conflict with the federal grant of power.

The state constitution then becomes the bases for all the laws enacted in that particular state. Just as in the case of the federal laws, the state laws must be enacted under the authority of the state constitution and not be in conflict with it. Thus, the primary source of the state law is the state constitution.

State Statutes. A state statute is a law enacted by the legislature of a particular state under a grant of power given by the state's constitution. State statutes deal only with problems in the state enacting them. They have no effect on anyone outside of its' state boundaries. Federal laws deal with national problems, and state laws deal with state problems.

City Ordinances. The various state legislatures through their constitutions have permitted smaller units of government to be enacted within their boundaries for the purpose of dealing with problems of government on a local level, and these units are known as cities. Through this grant of power from the state, cities are permitted to enact laws known as ordinances for the regulation of its affairs. As in the case of state laws,

city ordinances apply only within its boundaries. Further a city ordinance must not be in conflict with a higher law, state or federal.

Summary. The basic law in the United States is the Federal Constitution. The basic law of each state, besides the Federal Constitution, is the state constitution. Laws may be enacted by Congress under the Federal Constitution and by the state legislature under the state constitution, but these laws must not be in conflict with their respective constitutions or they are unconstitutional. Further, states may give authority to subsidiaries within itself, such as cities, to enact laws and form a government on a local level.

Questions And Problems.

1. Why is it said that the United States Constitution is the primary source for all laws in the United States?
2. What is a state statue?
3. What is meant when it is said that the United States Constitution is a specific grant of power?
4. When did the United States Constitution go into effect?
5. What are two specific grants of power given by the United States Constitution?

PART II

THE CONTRACT - FOUNDATION FOR THE BUSINESS WORLD

I. ELEMENTS OF THE CONTRACT WITH ILLUSTRATIONS

Introduction. The foundation of the business world is the contract. Without the contract the business world would cease to do business. Practically every aspect of buying and selling is governed by contract principles. The businessman knows the law governing contracts, so in order for the consumer to be able to deal with the businessman on an even basis he or she should also know the principles of contracts. As one becomes experienced in today's business world, he soon learns it can be very heartless and cruel. The businessman must make money, or it will not be long before he is not a businessman. The most important principle to remember in dealing with business comunity is, "if you do not take care of your own business affairs, no one else will do it for you."

Your Signature And Its' Importance. Every time you sign your name, it is highly probable that you made some sort of a contract which may be legally binding upon you, whether you read what you signed or not. Written documents are much harder to alter than oral testimony. A court presumes that a party has read what he has signed. For these reasons, it is important to read and understand what is being signed, not to mention the fact that you could be getting cheated by not reading the document.

The Contract. A contract is an agreement between two or more parties to do or not to do some particular thing which is enforceable by law. Of course anyone that has entered into a contract, and especially a written contract, knows that there are many complex elements making up the contract.

The Basic Ingredients Of A Contract.

The Offer. A contract cannot be entered into unless there has been communication between two or more parties indicating a willingness to enter into a contract. The initial communication which gives another party notice that someone would like to enter into a contract with him or her is the offer. The offer is the first essential element to a contract, and it is just as the word itself implies, an offer to do or not to do something. An offer must be specific, firm, definite, and communicated to the party for whom it was intended.

The following are examples of an offer:

A job offer. If I say to you, I will give you $500.00 per week to to investigate accidents for me, this is an offer of employment, or more commonly known as a job offer.

The offer to purchase. Another example of an offer is, if someone would say to you, I will give you $5000.00, if you give me the 1970 Ford automobile that you own.

The ordinary store purchase. Another example of an offer which most people do not think of as being an offer is the ordinary purchase in a store. In effect when you buy food, clothing, furniture, or anything else from a store, you are saying I will give you so many dollars for that item if you will sell it to me. Such is the case in every store purchase - an offer to buy is submitted, and if the store-keeper agrees to sell, a contract has been formed.

Advertisements. At this point advertisements should be discussed. Often one sees advertisements in newspapers and elsewhere, which advertises something at a ridiculously low price. Immediately, you

go to that store to purchase the item at the low price, and you are informed that you cannot have the item at the advertised price because there was a mistake made and the advertised price was incorrect. Do not become angry, as the store does not have to sell at the low advertsied price. An advertisement is not an offer to sell, but an advertisement is an invitation for an offer. The advertiser is asking in an advertisement for offers on the item for sale. The purchaser is the one making the offer, not the seller.

The reward. Another unusual type of an offer which one does not think of as being an offer to form a contract is the reward situation. Someone loses his wallet and wants it returned, so he puts an advertisement in the newspaper offering $100.00 for the return of the wallet. You see the advertisement, find the wallet and return it to the party who lost it. The party who lost the wallet has to pay you the $100.00 because a contract was formed when the wallet was returned.

The auction. Another unusual type of offer is the bid at the auction sale. The bid of so many dollars is in legal language an offer to pay so many dollars for the item being sold.

There are two types of auction sales - one, an auction with reserve, and two, an auction without reserve. An auction with reserve means that the seller does not have to sell to the highest bidder nor to anyone at all if he should so chose. An auction without reserve means that the items will be sold to the highest bid or offer.

From the foregoing you should realize that when you tellsomeone that you will do something if he will give or do something for you in return you have made an offer to enter into a contract. Of course, as in the

case of all contracts, the object of the contract must be legal.

Communication of the offer. In order for an offer to be valid, it must be communicated to the party to whom it is directed. Merely thinking about an offer is not an offer until it is communicated. An offer may be communicated in many different manners, and any manner is acceptable as long as it communicates the offer. A few examples of how an offer may be communicated are:

1. By telephone
2. By telegram
3. By letter
4. By direct oral communication.

An intent to contract. An offer must express an intent to enter into a contract in order for it to be an offer. A mere desire or a wish are not offers.

The following are some examples of statements which are not offers:

1. I would like to purchase your automobile, how much would you take for it?
2. I desire to purchase the house at 66 Doe Lane, Cincinnati, Ohio, if they would sell it to me for $5,000.00.

An offer must be definite in its' terms. An offer has to be exact in order for it to be a valid offer. There can be no maybes or ifs in an offer, or it is not an offer. The following examples are statements which are so indefinite in their terms that they cannot be considered an offer:

1. I will give you $75.00 or $100.00 for your automobile.
2. If you would sell me your watch, I might give you $10.00.
3. If you will sell me your farm, I will give you $10,000.00 sometime in the future.

How long is an offer good? An offer is usually considered to be good for a reasonable length of time, and after the passage of a reasonable length of time the offer terminates. Further, the offer itself may determine how long if is going to be good. For example:

> I will give you $5,000.00 for your 1970 Ford automobile, but you must accept my offer by 5:00 P.M. today, or it is void. If the offer is not accepted by 5:00 P.M., it is then void.

Of course, an offer can always be withdrawn before it is accepted.

Unilateral And Bilateral Offers. Offers are classified into categories - unilateral and bilateral.

A unilateral offer. A unilateral offer is one that does not require the return promise of the other party to the contract, but rather, requires the other party to act or not to act. The reward contract is an example of a contract that contains a unilateral offer. The offer requires the other party to do something in order to accept the offer.

The following is another example of a unilateral offer which requires the other party not to do something in order to accept the offer:

Uncle Joe says to his eight year old nephew, Huey, if you do not smoke until you reach the age of twenty-five, I will give you $1,000.00. If Huey does not smoke until he reaches the age of twenty-five, a contract will be formed upon his becoming twenty-five years of age. This offer does not require the other party to do something, but rather, it requires him not to do something - smoke.

A bilateral offer. A bilateral offer requires a return promise from the party to whom the offer was directed. A bilateral offer gets a return promise from the person to whom it is directed, to do something. Most ordinary business contracts start with a bilateral offer. The following

is an example of a bilateral offer:

Jones says to Smith I will give you $500.00 for your stereo if you will deliver it to my home before tonight.

Summary. An offer must be made with the intent to enter into a contract. An offer must be definite, and be communicated to the party for whom it is intended. All offers remain open for a reasonable length of time, unless it is stated otherwise or the offer is withdrawn. There are two classifications of offers: one, unilateral, and two, bilateral.

The Acceptance Of The Offer. The second element of a contract is the acceptance of the offer. The basic rule for the acceptance of an offer is that it must be a flat "yes", or it may not be an acceptance. If a party to whom an acceptance is directed starts adding terms to the offer, he is not accepting the offer but rather he is making a counter-offer.

In the example above where you were offered employment at $500.00 per week, the appropriate acceptance to that offer would be - I accept your offer, or, when do you want me to start to work, or words of that nature.

In the case of a written contract, the mere signing of your name on the written contract constitutes the acceptance. These are just two modes of acceptance, and they are acceptances of bilateral offers.

One of the more unusual types of acceptance is where there is no actual words of acceptance said, but rather an act is done which constitutes the acceptance. For example:

Suppose your neighbor says, the next time it snows, I will give you $25.00 if you will shovel out my driveway. Later, it snows, and you go over and shovel out the driveway. The shoveling of the driveway is the acceptance and upon doing the shoveling a contract is formed.

Just as in the case of the offer, the acceptance must be communicated to the party for whom it is intended.

Summary. An acceptance must be definite, and it cannot alter the terms of the offer, or it becomes a counter-offer. The acceptance must be communicated to the party who made the offer.

Consideration. The third element of a contract is what is known as consideration. Consideration means that a thing of value was given in exchange for a promise. For example:

In the case of the automobile purchase the consideration is the car and the money.

Contracts cannot be made for nothing, or in other words, something of value must be given in exchange for the promise. In the case of a sale of real estate for example, on the deed it states that in consideration Joe Doe does hereby transfer the "X" piece of real estate to John Jones. The one dollar and other good and valuable consideration makes the transfer valid.

Summary. Consideration is the third factor essential to the formation of a contract, and it is those items in a contract which are bargained for and exchanged between the different parties to the contract that is the consideration.

Parties To The Contract. The fourth element to a contract is, the parties to the contract must legally be able to enter into a contract. The law itself makes some people unable to make a contract. One of the most readily apparent is the insane person. An insane person cannot enter into a binding contract. An insane person is not responsible for his actions, and the law will not hold him responsible in the case of a contract.

Another party who in some cases cannot enter into a binding contract is the minor. The theory has been that a minor can be victimized by older and more experienced business people and the law should protect the minor. This is not to say that a minor can never enter into a contract for items called necessities. Necessities are such items as food, clothing, shelter, and medical treatment. When a minor enters into a contract for necessities, it is binding as to all parties including the minor. However, if a minor should enter into a contract for something like an automobile, the minor can terminate the contract at will by giving the automobile or what is left of it back to the seller. A minor can get out of contracts for things other than necessities by disaffirming the contract and returning the object of the contract or whatever is left of it. Further, if a minor should enter into a contract with an adult he or she can make the adult perform his end of the contract so long as the minor performs his part of the contract.

In the past women could not enter into contracts, but today they can make contracts just the same as men.

One party cannot enter into a contract for another unless he is expressly authorized to do so.

For contract purposes, the law treats corporations and partnerships as persons. They can enter contracts the same as an individual.

Summary. Parties to a contract must be legally able to enter into a contract. Insane persons are not legally capable of entering into a contract. Minors can enter into contracts for necessities and they are enforceable against all parties, but other contracts by minors are voidable by them. A minor can either enforce the contract or rescind it and return the subject of the contract to the other party.

Legality Of The Contract. The last essential element of a contract is that its object must be legal. One cannot enter into a contract to have someone murdered and expect the courts to enforce it. The same is true of any other contract which has an illegal objective.

Summary. The object of a contract must be legal. Contracts which ahve an illegal purpose are void and unenforceable.

Questions And Problems.

1. What are the five essential elements of a contract?
2. Waht are necessities?
3. How may an offer be communicated?
4. How long is an offer good?
5. Who can enter into a contract?
6. How must an offer be accepted?
7. Can a woman enter into a contract?
8. Can a minor enter into a contract?
9. Why is your signature important?
10. Is a newspaper advertisement offering something for sale an offer?

II. DISCHARGE OF THE CONTRACTUAL OBLIGATION.

Once you have entered into a contract, how is it ended?

Performance. One method for ending a contract is by performance. Once everybody has done what he or she was supposed to do under the terms of the contract, the contract comes to an end. No one owes a duty to the other.

By Agreement. Another method of ending a contract is by agreement of the parties to the contract. One party to the contract may say, let's forget the whole deal, and if the other side agrees, then the contract is at an end. Caution: This should be put in writing and signed by all parties to the contract.

By Operation Of Law. A third method of ending a contract is by what is called "operation of law". Under this method the law ends the contract, and thereafter, the parties to the contract do not have to perform their agreement. For example:

> Suppose that when a contractual arrangement is entered into its object is legal, but thereafter the legislature passes a law making its object illegal. The contract is ended by operation of law.

Summary. A contractual obligation may be discharged by:

1. performance
2. agreement
3. operation of law

Questions And Problems.

1. What is meant by the term, discharge of a contractual obligation?
2. What are three methods for discharging a contractual obligation?
3. Do all the parties to a contract have to agree to terminate the contract if it is going to be ended by agreement?
4. Why should an agreement to terminate a contract be in writing?
5. What happens to a contract if its objective later becomes illegal?

III. BREACH OF CONTRACT AND WHAT IT MEANS.

What Is A Breach Of Contract? A breach of contract occurs when one of the parties to the contract is suppose to do something that is required under the terms of the contract and fails to do so. For example - when a party fails to make his mortgage payment, his car payment, and etc., he or she has breached his or her contract.

Remedies For A Breach Of Contract. The party who fails to perform as he or she is supposed to do, is at the mercy of the other party to the contract.

The party who has performed may do one of several things when the other party has breached:

1. He may ignore the breach if the other party will thereafter perform his or her part of the contract as he or she is required, or
2. He or she may sue the party who did not keep the terms of the contract, and ask the court to make him or her perform, or
3. He or she may sue and ask the court to reimburse him or her in money for the amount that he or she was damaged.

Usually when a lawsuit arises over a breach of contract, the court will only award money for the damage caused by the breach of contract. In the case of real estate, however, a court will order a party to perform when he refuses. Land is unique in that there is only one particular piece of land which can fullfill the terms of the contract, so a court will make the selling party transfer the real estate to the buyer.

Waiver Of The Breach. As indicated above, a breach of contract may be waived and the contract kept in full force and effect. Where a contract calls for thepayment of money, and a payment is missed, if the other party will thereafter take a payment, the breach is waived and the contract is still considered to be good.

A New Agreement As A Waiver Of The Breach. Another method by which a breach of contract can be waived is by getting the other party to enter a new agreement thereby replacing the old contract.

Summary. A breach of contract occurs when one of the parties to the contract fails to perform as he or she is required under its terms. The other party can request a court of law to require the breaching party to perform or for money damages. A breach of contract may be waived by the party damaged if the breaching party thereafter performs as required under the terms of the agreement, or the breach can be nullified by making a new contract between the same parties.

Questions And Problems.

1. What is a breach of contract?

2. What may a party to a contract legally do if the other party to the contract fails to keep the agreement?

3. In what type of contract will the court order a party to perform?

4. How may a breach of contract be waived?

IV. OTHER LEGAL ASPECTS OF A CONTRACT.

Classifications Of Contracts. As we have already seen there is the unilateral and bilateral offer, and so of course, there is the unilateral and bilateral contract.

The unilateral contract. A unilateral contract is where the party the party making the offer does not receive a return promise from another party. The doing of some act which is essentially the performance of the contract is the acceptance of the offer. An example of the unilateral contract is the reward situation. A party makes an offer of reward for the performance of a specified act, and the contract is formed by the doing of the act.

The bilateral contract. A bilateral contract, however, requires the exchange of promises between the parties to the contract. The party making the offer must receive a return promise of performance from the party to whom the offer was directed. Most business contracts are bilateral contracts. An example of a bilateral contract is:

John Doe agrees to pay $150.00 to John Smith for a chair that John Smith owns, and John Smith agrees to deliver the chair to John Doe in exchange for the $150.00.

Express And Implied Contracts.

An express contract. An express contract is one where all of the terms are clearly and specifically set forth by the parties to the contract.

An implied contract. The law allows a form of contract where the terms of the contract are not specifically set forth, but it can be gathered from the acts of the parties that they intended to form a contract - this type of contract is known as an implied contract. For example:

Suppose John Doe says to Abe Smith, I am in desperate need of help to get my hay harvested. Abe Smith helps John Doe for the next week. In this case, a contract is formed by the acts of the parties.

Abe Smith is entitled to a reasonable sum from John Doe for his services, even though there was no mention of payment for the help to be given.

Oral And Written Contracts. Certain types of contracts can be either written or oral. An oral contract is just as enforceable as a contract in writing, unless it is one of the special contracts that the law requires to be in writing. The principledifference between a written contract and an oral contract is the length of time for which each is enforceable. The written contract is enforceable for a longer period of time.

TO BE SAFE IN YOUR BUSINESS AFFAIRS, AND SO THAT NO FUTURE DISPUTES WILL ARISE AS TO YOUR AGREEMENT, ALWAYS HAVE IT IN WRITING.

The following are examples of the types of agreement which the law requires to be in writting:

1. The contract for the purchase and sale of real estate.
2. Contracts which cannot be performed within one year.
3. Contracts for the purchase and sale of goods over a certain dollar amount.

Valid, Unenforceable, Voidable, And Void Contracts.

A valid contract. A valid contract is one which fulfills all of the legal requirements for a contract. A court will enforce a valid contract.

An unenforceable contract. An unenforceable contract is one that as a matter of law is no good even though there may be a moral obligation to perform. For example:

Suppose a party enters into a contract with the United States Government and for some reason the Government decides that it does not want to carry out the terms of the contract. The contract is unenforceable because you cannot sue the Government without its permission.

The Government has a moral obligation to perform, but it cannot legally be made to perform.

Another example of anunenforceable contract is one that had a legal objective when formed, but later the objective becomes illegal.

The voidable contract. A voidable contract is one where one of the parties to the contract has the right to either enforce the contract or not to perform at his own option. For example, the contract of an infant can either be enforced or rejected by the infant. Also, a perosn who is induced to enter a contract by fraudulent means, has the option of either rejecting or enforcing the contract.

The void contract. A void contract is not a contract. The parties may have thought they were entering into a contract, but if it is void, the courts will hold that it is not a contract and unenforceable.

Contracts Made Under Some Type Of Force.

Physical force or duress. A contract which has been formed under duress or physical force is not a valid contract, and is unenforceable in the courts. You cannot hold a gun at someone's head and make that person form a contract, nor can you beat someone into forming a contract.

Undue influence. Another type of contract which is invalid is the one created under what is known as undue influence. In order for undue influence to exist, one of the parties to the contract must be under the influence of another who unfairly persuades the contracting party to enter into a contract that he would not enter if he were acting under his own free will.

Free Will. When a party enters into a contract it must be done of his own free will. In either of the above situations the contract is voidable by the party forced into entering the contract. He can either refuse to perform, or force the other party to perform.

Fraud. When there is a material misrepresentation of a fact in order to get someone to enter into a contract, it is said to be fraudulent. A fraudulent contract is also voidable.

Questions And Problems.

1. What is a void contract?

2. Give an example of a unilateral contract?

3. A contract made under undue influence is: (a) unenforceable, (b) void, (c) valid, (d) voidable.

4. What is an implied contract?

5. What is a voidable contract?

V. A CHECKLIST TO CONSULT BEFORE SIGNING YOUR NAME OR ENTERING A CONTRACT.

1. Do you know what you are signing?

   Examine the paper before you sign it, and find out what it is that you are signing. Are you signing a purchase contract? A note? Find out exactly what you are signing.

2. Have you read everything in the document?

   Where is the "fine Print?" Have you read it?

   Oral promises are worthless, and do not believe them unless you see them in the writing.

3. Have you checked all of the papers? Are all of the blanks filled in? Make sure that you sign nothing in blank to be filled in later. Make sure the instrument says what you think it says because you are bound by the instrument and not what you thought.

4. Do you have any questions about what you are signing?

   There is only one way to get questions answered, and that is to ask them.

5. Do you have a copy of what you signed? Never sign anything unless you are going to receive a copy of it.

6. Have you thought about what you are doing?

   If you need time to think about what you are doing, ask for time to think it over.

7. Do you need an expert to examine what you are signing, so that you will know your rights and obligations?

   If you have any doubts about what you are signing and its consequences, you should consult your attorney, and have him explain the document to you.

8. Where a buyer in a home solicitation sale (one that takes place at the residence of the buyer) signs a contract for the purchase of goods or services for more than $35, the buyer has certain rights prescribed by Ohio Law. First, the sale must be evidenced by a writing. Second, the writing must contain a statement explaining the buyer's right to cancel. Third, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. However, the buyer cannot cancel a home solicitation sale if the buyer requests the seller to provide goods or services immediately because of an emergency. Fourth, within ten days after such a sale has been cancelled, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. Note, that after cancellation, the buyer upon the seller's demand, must return the goods.

   The foregoing is based on Ohio Revised Code SS 1345.21 and following.

9. The Ohio Revised Code SS 1345.01 and following also prescribe remedies for consumers (buyers) who are the victims of what are called deceptive consumer sales practices or unconscioable consumer sales practices. An example of a deceptive consumer sales practice is where a seller tells a consumer that the goods are new or unused, if in fact, they are used. An example of an unconscionable sales practice is where a seller knew at the time of the transaction that the consumer was unable to reasonably protect his interests because of his physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement and the seller took advantage of that.

PART III. BUSINESS TRANSACTIONS

I. THE PURCHASE AND SALE

Introduction. As has already been indicated, a purchase and sale agreement is a form of contract. Every time a purchase is made in a store, a contract has been created, and title to property passes from one party to another. The law of purchase and sale is a combination of contract law and Personal property law. The law of sales is about the only area of law which is uniform throughout the United States, as every state except Louisiana now has the Uniform Commercial Code with minor variations which governs sales.

Elements Of The Purchase And Sale.

First, for a sale to occur, the goods which are the subject of the sale must be in existence.

Second, for a sale to occur, title to the goods must pass from the seller to the buyer at the time of the agreement. An agreement whereby the seller agrees to transfer the title of the goods at a time in the future is not a sale, but rather is a contract for a sale. Thus, the factor that makes a sale different is, in order for a sale to occur title to the goods must pass from the seller to the buyer at the time of the agreement.

Illustrations of a sale:

1. John Joy goes to Food-Stuff Grocery and says, would you please give me two pounds of bologna. The storekeeper slices two pounds of bologna and gives it to Mr. Joy and says, that will be one dollar. Mr. Joy pays the storekeeper. A purchase and sale was completed. The goods were in existence, and title to the goods passed immediately.

2. George Jones goes to Richmond Clothiers and says, I would like to buy a suit. The tailor shows Mr. Jones several suits and Mr. Jones says, I will take the purple one. The tailor says that will be $65.00, and Mr. Jones pays him. As in the preceding illustration, a purchase and sale was completed.

A Contract For A Sale. A contract for a sale is an agreement to perform all of the elements of a sale at sometime in the future. Under a contract for a sale, the ownership and title to the goods passes at sometime in the future. Goods which are bought on time is an example of a contract for a sale, as the seller retains title.

Illustration of a contract for a sale:

John Smith says to Joe Blue, if you will give me $5.00 today, I will give you my portable radio next week. This is a contract for a sale as ownership and title does not pass, but will pass in the future.

A Contract For Labor And Materials. Another type of contract which is often confused with a sale and a contract for a sale is the contract for labor and materials. A contract for labor and materials is an agreement to produce goods which are non-existant at the time of the agreement, and which are special and cannot be resold in the regular course of business.

Illustration of a contract for labor and materials:

Joe Doe who wears a size fifty suit goes to Fred the tailor and says, I would like a custom tailored suit. Fred the Tailor tells Mr. Doe that he can make him one like he wants for $100.00. Mr. Doe says, fine, make me the suit. This is a contract for labor and materials as the goods are non-existant and they are specially made goods which cannot be sold in the regular course of business.

Certain Contracts For A Sale Must Be In Writing. Contracts for a sale in excess of a certain amount must be in writing, that amount differs from state to state. The whole contract need not be in writing however, only some evidence of the contract need be in writing. Here, the contract for a sale differs from the ordinary contract.

The Law Of Sales Applies Only To Personal Property. It should be pointed out that the law which applies to sales applies only to the purchase and sale of personal property and not to the sale of real property. Personal property is such things as automobiles, furniture, boats, televisions, just to name a few, whereas real property is land and everything permanently attached thereto.

Questions And Problems.

1. What are the elements of a purchase and sale?

2. What is a contract for labor and material?

3. Give an example of a contract for a sale?

4. Give an example of a purchase and sale?

5. Give an example of a contract for labor and materials?

II. WHEN DO YOU OWN THE ITEM CONTRACTED FOR, OR PURCHASED?

Introduction. Just because a person has an item in his or her possession does not necessarily mean that he or she owns or has title to that particular item. Possession and ownership are completely separate matters.

The Cash Sale. When a party walks into a store and pays cash for an item, he becomes the owner of the item upon taking possession of the item purchased, unless it is otherwise agreed.

Delivery And Acceptance. If at the time of the purchase and sale, the buyer does not immediately take possession of the goods, the rule is that the title to the goods passes upon delivery to the purchaser. Here again it is important to know the terms of your contract because the foregoing rule can be changed by the terms of the contract, and title may pass immediately. What difference does this make? Consider the following:

> John Jones purchases a new T.V. set from Easy-Credit Sales for $300.00 cash. In the purchase and sale agreement that John Jones signs with Easy-Credit, it states that title to the T.V. passes to Mr. Jones immediately and not upon delivery. The same day Easy-Credit's wharehouse burns down with Mr. Jone's T.V. in it. Who suffers the loss for Mr. Jone's T.V.? John Jones. The reason: The contract was complete, and title was in John Jones. The T.V. was John Jones property, so it was his loss.

F.O.B. And F.A.S.

When goods are purchased which have to be shipped, one of the above two terms may appear on the order form. It is important to know what these terms mean because it determines when the buyer obtains title and responsibility for the goods purchased.

F.O.B. means free on board, and F.A.S. means free alongside. Under either of these situations, the seller is only obligated to deliver the goods to the party who is going to deliver them to the buyer. The important consideration here is that title to the goods passes to the buyer when the seller has delivered them to the party who is going to make delivery. When title to the goods passes, the goods become the responsibility of the buyer, and if they are destroyed or lost, then the buyer suffers the loss.

The above situation can be changed somewhat by making the delivery terms F.O.B. destination or F.O.B. at a specified place. If the purchase and sale agreement contains either of the two additions to the F.O.B., then title to the goods does not pass until they have either arrived at their destinarion or the place specified. The risk for the goods safe arrival thus becomes the seller's.

Further, there is another factor to be considered in each of the above situations. In each case, the purchase price must be paid when the seller completes his obligation. If the contract reads F.O.B. or F.A.S., the seller is entitled to be paid the purchase price upon giving the goods to the party who is going to deliver them to the buyer. This could be important if it is going to take some time to deliver the goods. F.O.B. destination or F.O.B. at a specified place means that the seller is not entitled to be

paid until the goods arrive at the place where the buyer wants them.

The last factor to be considered is the shipping costs. If the goods are shipped F.O.B. or F.A.S., the buyer is responsible for the shipping costs from the seller to the buyer. If the goods are shipped F.O.B. destination of F.O.B. at a specified place, the seller pays the shipping costs to the destination or specified place, which is a great savings to the buyer.

C.I.F. And C.F.

When the term, C.I.F. appears in an agreement for the sale of goods it means:

1. the price is the total cost:
2. the goods will be insured against loss or damage during transit:
3. the cost of the freight is included in the total cost.

Title in the above situation passes to the buyer when, one, the seller delivers the goods to the party who is to make the delivery of the goods, and two, the seller has insured the goods and forwarded the insurance and shipping documents to the buyer.

The term C.F. is the same as above but does not include insurance.

C.O.D. In certain cases, a seller may wish to retain control over shipped goods to insure that he will receive the purchase price or the return of the goods. However, unless it is agreed otherwise title to the goods passes to the buyer when delivered to the party who is going to deliver them to the buyer. Thus, if the goods are damaged or destroyed, after they are given to the party who is to make delivery, it is the buyer's loss.

Under the terms of a c.o.d. arrangement, the party making the delivery collects the purchase price from the buyer and in turn gives it to the seller. If the party collecting the money loses it, the loss is the seller's.

Sale Or Return. Oftentimes, a sale is made whereby it is expressly agreed that the buyer may return the goods purchased if he is displeased with them. This is known as a sale or return.

Title in this instance passes conditionally upon the sale and the purchaser taking possession of the goods. If the buyer decides not to keep his purchase he may take the goods back and get his money returned, in which case, title to the goods passes back to the seller. For example:

John Jones buys a new colored T.V. from Easy-Credit Sales with the agreement that if he decides not to keep it he can return it within 10 days. Mr. Jones takes the T.V. home and after two days he decides he is not going to keep it, and that he will return it on the third day. That night Mr. Jones house burns down, and the T.V. is lost in the fire. Who suffers the loss? Mr Jones suffers the loss because the title to the T.V. was still in him and not in Easy-Credit Sales. Only upon the return of the goods is the buyer relieved of the responsibility of damage or loss.

Sale On Approval.

When a sale is made on approval, on trial, on satisfaction, or on similar terms, it is a conditional sale known as a sale on approval. In this case, title to the goods does not pass until the buyer expresses his satisfaction or approval of the goods. If he does not like the goods and returns them, there is no sale. Of course, the goods must be returned within a reasonable length of time, or they will become the property of the purchaser. You cannot use the goods for six months or a year and then return them with the hopes of getting your money back.

Goods Purchased At An Auction.

The auction without reserve. When goods are being sold at an auction sale without reserve, as soon as the auctioneer's hammer falls and he says

sold to the highest bidder, title to the goods immediately passes to the highest bidder, conditioned only upon the payment of the bid price.

The auction with reserve. In the case of an auction with reserve, the seller has the right to say which bidder he wants to sell the goods to, if indeed he wants to sell them at all. Only after the seller has given his approval to a bid, has a sale occurred. Upon the seller giving his approval the title to the goods then pass to the buyer, conditioned upon the payment of the purchase price.

Stolen Goods. If one purchases stolen goods, he or she does not own them. Title to stolen goods does not pass from a "fence" or thief to a purchaser. Title to stolen goods remains in the party from whom they were stolen. For example:

Bill Bell is ap' oached on the street by Shady Joe who wants to sell Mr. Bell a one carat diamond ring for $50.00. Mr. Bell decides to buy the ring, and he gives Shady Joe $50.00. Later in the day the police come to Mr. Bell's home and they inform Mr. Bell that the ring is stolen and he must give it to them. The police tell Mr. Bell that the ring was stolen from Judy Blue and it belongs to her. Who owns the ring? Judy Blue. The reason - title to stolen goods does not pass, but remains in the party from whom they were stolen. Bill Bell in this case loses $50.00, unless he can find Shady Joe and collect it back from him, and this is highly unlikely.

Lost Goods. What happens if you buy goods that have been lost? In the case of lost goods, the party who finds the goods acquires a secondary type of title. The person who lost the goods has the right to recover them from the finder, but as to anyone else, the finder has the right to possession. So, if a party buys lost goods from a finder, he or she obtains only a secondary title, and if the party who lost the goods

finds out who has his or her goods, that party can recover them and the purchaser is out the money paid for the goods.

Questions And Problems.

1. Who owns stolen goods?

2. What does the term C.O.D. mean, and when does title to goods shipped C.O.D. pass to the purchaser?

3. What are the advantages of having goods shipped F.O.B. destination?

4. What does the term C.I.F. mean?

5. What does the term F.A.S. mean?

6. What is a sale or return?

7. What is a sale on an approval?

8. What is a cash sale?

9. If at the time of purchase and sale, the buyer does not take possession of goods purchased, does title to the goods pass to the buyer?

10. Discuss purchasing goods at an auction?

III. EVIDENCE OF RIGHT TO POSSESSION, OWNERSHIP OR TITLE.

Whenever goods are purchased, one should get some type of written evidence that they were sold to you and that you now own them, or have the right to have them in your possession. A person would not think of purchasing an automobile without receiving a certificate of title. The same rule should apply to all purchases. One should always receive some type of receipt which shows that he owns the goods in his possession, or that he has the right to have the goods in his possession.

What is evidence of ownership or evidence of the right to possession? The purchase and sale agreement may well show that you own or have the right to have the goods in your possession. The receipt or bill marked paid in full may also show that you own the goods purchased, so do not throw it away. A cancelled check showing that you paid for the goods may show ownership, so keep your cancelled checks. The retail installment contract will show that you are purchasing the goods and have the right to the possession of the goods.

Any type of written agreement or evidence showing that the buyer has title or right of possession to the goods transferred is sufficient evidence of title or right to possession.

Questions And Problems.

1. Why is it important to keep receipts?
2. How can you prove you own goods in your possession?
3. Why may it be important for you to prove that you own certain goods?

IV. THE RETAIL INSTALLMENT CONTRACT.

What Is A Retail Installment Agreement? A retail installment contract is a conditional sales contract. The usual installment contract provides that the buyer will pay the seller for the goods in "X" number of payments. In this type of situation, title to the goods normally does not pass from the seller to the buyer, but rather, the seller retains title to the goods, or a security interest in the goods, until the purchase price is completely paid. Further, in practically every retail installment contract there is a clause which allows the seller to repossess his or her goods if the buyer does not make his or her payments.

The Retail Installment Contract In Ohio. (O.R.C. & 1317 et seq)

The law in Ohio provides:

1. Almost all retail installment contracts must be in writing.
2. The buyer must receive a copy of the contract being signed.
3. The contract must contain:
   a. the price
   b. the down payment
   c. cost of insurance (if any)
   d. finance charges
   e. balance due
   f. payment terms
   g. any other essential facts.

How Much Does The Retail Installment Contract Cost?

Most everyone has heard of the term, "30 days same as cash." This term should tell a person immediately that if it is going to take longer than 30 days to pay for the item purchased, the total contract will cost more than the purchase price.

Almost every retail installment contract is going to cost the purchaser money. The amount the purchaser ends up paying will usually be substantialy more than the purchase price. Not only will the purchaser be paying the purchased price, but he will be paying interest and service charges for the cost of keeping records of the account. The cost is going to vary, of course, with every different retail installment contract, so every buyer should understand the agreement before signing.

Failure To Keep The Retail Installment Agreement By The Purchaser.

If the purchaser fails to keep the terms of the retail installment agreement, the seller may do one of two things - sue the buyer for damages without repossessing the goods sold, or repossess the goods, sell them and apply the sale price to the balance owing, and then sue the buyer for the new balance.

Under the first option, where the seller does not repossess the goods, the suit against the buyer will be for the amount still owing under the terms of the contract. Here the seller says that he has been damaged this amount by the buyer's failure to keep his agreement.

Normally, however, the seller will repossess the goods if at all possible, and then resell them and apply the proceeds of the sale to the balance owing. If the goods are to be resold, the seller in Ohio must notify the buyer of the date, time, value of the goods and place of sale within 5 business days after taking possession. Failure to give the prescribed notice precludes the seller (or secured party) from recovering

the costs of retaking possession and further eliminates any right to a deficiency judgment. Prior to the time of the sale, the buyer may reclaim his or her goods if he or she can come up with the balance of the contract price that is owed to the seller. Or, the buyer may attend the sale of the repossessed merchandise, and bid on it, and buy it if he or she submits the highest bid.

Once the goods have been resold, the resale price is applied to what is still owed on the contract price. Then, if there is still anything owing, this amount is called the deficiency. The original buyer is still legally required to pay this amount to the seller, and if the buyer does not pay this amount to the seller, the seller can sue the buyer and obtain a deficiency judgment against the buyer. HOWEVER, IF THE SELLER HAS NOT NOTIFIED THE BUYER OF THE TIME, DATE, AND PLACE OF SALE OF THE REPOSSESSED GOODS, THE BUYER IS NOT LEGALLY REQUIRED TO PAY THE DEFICIENCY.
WARNING: THE SELLER IS ONLY REQUIRED TO SEND THE NOTICE TO THE BUYER'S LAST KNOWN ADDRESS.

Consider the following examples:

1. John Doe purchases a T.V. set from Boob Tube Sales and agrees to pay them in 12 installments of $50.00. After the fourth payment, John becomes ill and is unable to make any more payments. Boob Tube Sales comes to John's house and repossesses its' T.V. Five days later John receives a registered letter notifying him that his T.V. is going to be sold at one o'clock on the fourth day of March 1970 at its' store for a minimum of $50.00. The television is sold for $200.00 on the fourth. John still legally owes Boob Tube Sales, $200.00. The T.V. was sold for $200.00, and John made four $50.00 payments, making a total of $200.00 in payments. Thus, Boob Tube Sales has received $400.00 of the $600.00 purchase price. John has to pay the balance, or $200.00.

2. In example 1 above, if Boob T.V. Sales had not notified John of the sale after repossession, John would not be legally required to pay the deficiency in Ohio.

Ohio Revised Code SS 1317.12 and following are concerned with default under a retail installment contract.

An example of A Retail Installment Contract is on the following page.

An Example Of A Retail Installment Contract.

RETAIL INSTALLMENT SECURITY AGREEMENT

Whereas _____ Debtor,

residing at the premises known as No. _____ Street,

in _____.

EASY CREDIT FURNITURE COMPANY of Cincinnati, Ohio, on the following terms and conditions, the chattel property hereinafter described:

DESCRIPTION OF COLLATERAL:

Cash Price of Collateral	$_____
Ohio Sales Tax	$_____
Documentary Service Charge	$_____
Total Cash Price	$_____
Less Down Payment	$_____
Unpaid Balance of Cash Price	$_____
Carrying and Service Charge	$_____
Total Indebtedness	$_____

Now, Therefore, in consideration of said sum of _____($_____) Dollars, to _____h_____ paid by EASY CREDIT FURNITURE COMPANY, the receipt whereof is hereby acknowledged, the said Debtor does hereby bargain, sell and convey to the said EASY CREDIT FURNITURE COMPANY, secured party, the foregoing described chattel property.

The condition of this conveyance is such that if the said _____ _____ Debtor _____, shall pay to the said EASY CREDIT FURNITURE COMPANY, Secured Party, at its office in Cincinnati, Ohio, each _____ hereafter beginning on the _____ day of _____ 19 ____ the sum of $_____ until the sum of $_____, which is the unpaid balance of the purchase price of said property, shall have been paid and shall perform all the other conditions of this security agreement, by said debtor _____ to be performed, then this conveyance shall be null and void: otherwise to remain in full force and effect.

Debtor agrees that the Collateral will be kept at _____
Street

_____ which is the
City County State

Debtor's residence. Debtor will promptly notify Secured Party of any change in the location of the Collateral and Debtor will not remove the Collateral from the above address without the written consent of the Secured Party.

Debtor will not sell, exchange, lease or otherwise dispose of any interest in the Collateral without the written consent of the Secured Party, and will not permit any lien, security interest or encumbrance to attach to the Collateral.

Debtor will maintain the Collateral in good condition and repair; maintain insurance on the Collateral against fire, theft, and such other hazzards and in such form and amount as Secured Party may require and for the benefit of Debtor and Secured Party as their interest shall appear. Debtor assigns to Secured Party all right to proceeds of any insurance not exceeding the unpaid balance hereunder and directs any insurer to pay all proceeds directly to Secured Party and authorizes Secured Party to endorse any draft for the proceeds on debtor's behalf.

Upon happening of any of the following events or conditions: (a) default in the payment or performance of any of the obligations or of any covenant or liability contained or referred to in any note or notes evidencing the obligation secured hereunder; (b) loss, theft, destruction, sale or encumbrance of or to the Collateral; (c) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property or, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy laws by or against Debtor; (d) any default under the terms hereunder or if the statements and representations made by Debtor herin are not true; or (e) if Secured Party deems itself insecure, Secured Party may, at its election, declair the entire amount of the indebtedness then outstanding due and payable at once and Secured Party shall have the rights and remedies of a Secured Party under the Ohio Uniform Commercial Code, including the right to enter any premises of Debtor without legal process and take possession of and remove the Collateral. Debtor agrees, upon request of Secured Party, to assemble the Collateral and to make it available at the place designated by Secured Party. Any requirement of reasonable notice of any disposition of the Collateral or as otherwise required shall be satisfied if such notice is mailed to the address of Debtor shown in this Agreement at least ten days before the time of such disposition.

No waiver by Secured Party of any default shall be effective unless in writing, nor shall operate as a waiver of any other default or of the same default on a subsequent occasion. All rights of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party, and all obligations of debtor shall bind the heirs, executors, administrators, successors and assigns of Debtor.

Secured Party is hereby authorized to fill any blank spaces. THERE ARE NO WARRANTIES BEYOND THE FACE HEREOF. This Agreement constitutes the entire agreement between the parties. If there is more than one Debtor, their obligations hereunder shall be joint and several.

IN WITNESS WHEREOF, the said debtor _____Ha_____hereunto set _____h_____hand_____on this _____day of _____,19 ____ and also acknowledges receipt of an exact copy of this instrument.

Signed in the presence of: _____

_____ _____

_____ _____

$_____Cincinnati, Ohio, _____,19_____.

For VALUE RECEIVED, the undersigned jointly and severally promise to pay to the order of Easy Cred t Furniture Company, at its office the sum of_____dollars payable in _____ installments of $_____each, the first installment payable_____, 19_____, and continuing said payments until all installments hereof are paid.

All parties to this note, including indorsers, sureties and guarantors hereby severally waive presentment for payment, notice of nonpayment, protest, notice of protest and diligence in bringing suit against any party thereto, and all indorsers, guarantors, and sureties hereon agree to any extension or postponement of the time of any payment. This note is a purchase-money note secured by a Security Agreement executed this day. If any installment of this note is not paid when due or in the event of any default in any of the conditions of the Security Agreement, securing this note, then all installments hereof remaining unpaid shall immediately become due and payable at the option

of the holder, without notice or demand, said notice or demand hereby being waived.

_____

_____

_____

_____

Address City County State

This note executed at _____, _____ County, Ohio.

_____ _____

Questions And Problems.

1. What is a retail installment contract?

2. What remedies does a seller have if the buyer does not keep his part of the agreement?

3. What does the retail installment contract on the preceeding pages say?

V. PERFORMANCE AND BREACH OF THE SALES CONTRACT.

Performance. A sales contract is basically no different than any other contract when it comes to carry out the terms of the agreement. Each party, the buyer and seller, has a duty to do what each agreed. Usually, the seller agreed to deliver a specified item to the buyer for a certain amount of money to be paid by the buyer. Of course, there may be additions to the basic agreement, which each party will be required to perform.

Breach Of The Sales Contract.

Definition. If a party refuses to perform what he has legally agreed to in a contract, he has committed what is called a breach of contract. An example of a breach of contract would be, if money was to be paid in installments and part of the payments were not made.

Rights of the seller upon breach by the buyer.

a. Right to recover goods. Today, most sales agreements contain a clause which states that if the buyer fails to pay for the goods purchased or for other specified reasons, the seller has the right to go into the buyer's home, or wherever the goods are located, and recover them.

Further, when the goods are sold, the seller may have made the buyer execute a security agreement which gives the seller an interest in the goods sold until they are paid for. Through the security interest the seller has the right to repossess the goods if the buyer does not keep his agreement with the seller. A security interest would be what a layman would call a mortgage.

b. Resale of the goods. After the seller has recovered the goods, he may, if he so desires, resell the goods. Under Ohio law, the seller is required to notify the buyer of the time, date, and place where the goods are to be sold.

When the goods are sold the seller must credit the buyer's account with the amount of the sale. At this point it is important to understand that the buyer is still required to pay the seller even after he has taken the goods back and resold them. The amount the buyer is required to pay, is the difference between what is owed and the amount of the resale of the goods. For example:

Mr. Y. purchases a new car for $4,000.00 from New-Car Company. Mr. Y. pays $1,000.00 down and agrees to pay $100.00 per month until the car is completely paid for. After making five payments, Mr. Y. quits making his monthly payments, and New-Car Company repossesses the automobile. At this point Mr. Y. has paid $1,500.00 towards the purchase price of $4,000.00. After notifying Mr. Y. of the time, date, and place of sale, New-Car Company reselles the car for $2,000.00 which amount must be credited to Mr. Y.'s account. Mr. Y. still legally owes New-Car Company $500.00.

c. The deficiency judgment. In the resale material above, it is seen that the buyer is required to pay the difference between the resale price and the amount owed. If the buyer fails or refuses to pay the difference, the seller may sue the buyer for the difference. The judgment the seller will receive from the court is known as a deficiency judgment, or the difference between the resale of the goods and what is owed.

d. Right to rescind the contract. If the seller still has the goods in his possession when the breach of contract occurs, he may simply call the deal off by notifying the buyer. This is known in legal terms as rescinding the contract. It is important for the seller to let the buyer know that he is calling the deal off, or he may be required to perform if the buyer later comes back and performs. If the seller has not notified the buyer of his intentions of calling the deal off after the breach has

occurred and the buyer then performs, the seller must also perform his part of the contract.

Rights of the buyer upon breach by the seller.

a. Refusal of the seller to deliver goods. If title to the goods purchased has passed to the buyer, and the seller refuses to deliver them to the buyer, the buyer may legally force the seller to give him the goods. A court, through what is known as a replevin action, will send the sheriff to get the goods for the buyer if title to the goods has passed to the buyer.

A second alternative for the buyer is to sue the seller for conversion of his property if title to the goods has passed to the buyer. Conversion is the wrongfully taking or detaining of property which belongs to another. In this case, the buyer may recover in money the value of the goods, if the buyer has paid the purchase price.

A third alternative for the buyer when the seller refuses to deliver the goods purchased, is to sue the seller for breach of contract. In this case the buyer must be able to prove that he has been damaged in some way. If the buyer can prove that he has been damaged, the court will award him money damages. Consider the following example:

Joe Blue wants to buy a 23 inch colored console television. Mr. Blue goes to Easy-Buy T.V. Sales and finds the exact set that he wanted. Easy-Buy says they will sell it to Mr. Blue for $200.00 which Mr. Blue agrees to pay. When Mr. Blue goes to pick up his T.V., Easy-Buy will not give it to him. Mr. Blue prices the same set at other stores and finds out the price has gone up and the set now costs $300.00. Due to Easy-Buy's breach of contract, Mr. Blue has been damaged in the amount of $100.00, because not it will cost Mr. Blue $100.00 more to buy the same T.V. set.

Even if title to the goods have not been transferred to the buyer he may bring a breach of contract suit as set forth in the third alternative above. The important thing to remember about a breach of contract suit is that you must have been damaged in some manner. If you can go out and buy the same goods at the same price, you have not been damaged, merely inconvenienced.

b. Right to rescind the contract. If the seller refuses to deliver the goods or perform some aspect of the contract, the buyer may call the agreement off by notifying the seller. It is very important for the buyer to notify the seller that the deal is off because the seller might perform his part of the contract and then force the buyer to go through with the deal.

In the case where the seller delivers goods which are not the same as the buyer purchased, the buyer can call the deal off. Here, the buyer must also notify the seller that the deal is off, and it must be done within a reasonable length of time after the delivery of the wrong goods. After the aforesaid notification, the buyer must give the goods back to the seller.

c. Forcing the seller to perform his part of the bargain. In a few rare cases, the seller can be made to perform his part of the contract. If damages will not adequately compensate the buyer, the buyer may ask the courts to make the seller perform as agreed. An example of this type of situation is where the item bought and sold is the only one in the world, such as a stamp, an original oil painting, a coin, and the like.

Questions And Problems.

1. What is a deficiency judgment?

2. What must a seller do under the law in Ohio before he can obtain a deficiency judgment?

3. Discuss what a buyer may do when the seller refuses to perform his part of the contract?

4. What is a breach of contract and give an example?

5. May a buyer attend the resale of goods and repurchase them?

VI. SALES AND WARRANTIES

Introduction. A warranty is a form of guarantee which says either expressly or impliedly that the item purchased will last for a certain length of time under a specified use without breaking, or perform in a specified manner, or meet certain specifications.

There are two types of warranties:

1. Express, and
2. Implied

A. Express Warranties.

Elements Of An Express Warranty, An express warranty may be either written or oral, but it can only be made by the seller.
An express warranty may be a representation of a present or past fact, or it may be a representation as to how the item will perform in the future. An express warranty may be a representation as to how long or how trouble free an item will work.

Representation Of A Past Fact. Often purchases and sales involve used items, and it is in this area of sales where express warranties as to past facts become important. Consider the following:

First, one might be interested in the age of an item, as the age might determine its value. If you are told an item is of a certain age, this is an express warranty. A 1966 automobile is certainly worth more than a 1960 automobile.

Second, a person may be interested in how much an item has been used, if it is a used item. If a seller tells you that an item has been used very little, or that it is like new, this is an express warranty as to the item's condition. Upon using the item for the first time, it should not fall apart.

Representation Of A Present Fact. An express warranty of a present fact is a representation of something about the item at the time it is bought.

An excellent example of this type of warranty, is the representation that the item is in A-1 shape or that it is just like new. Upon using an item described as such, you do not expect it to fall apart on the first use.

Another example of an express warranty of a present fact would be if a seller told you that a car had a V-8 engine. You would not expect to find a six cylinder upon opening the hood.

Representation As To Future Performance. A third type of express warranty, is the representation as to how the item will perform in the future. The most common example of this type of warranty is the new car warranty. Some new cars are now warranted that they will be mechanical free for five years or fifty thousand miles, whichever occurs first. Another common example of this type of warranty is the new tire warranty. A new tire warranty warrants the tires from certain defects and in some cases as to how long they will last.

Always Get Express Warranties In Writing. Even though oral express warranties are valid, always get an express warranty in writing. Sellers of goods are interested in only one thing - making the sale. Sales people have a habit of forgetting or denying what they told you after the sale when the item sold goes bad.

B. Implied Warranties.

Elements Of An Implied Warranty. Implied warranties are those representations as to the goods which can be implied from the circumstances surrounding the purchase and sale. Implied warranties are imposed as a matter of law.

Implied Warranties As To A Fitness For A Particular Use Or Purpose. Generally, there is no implied warranty for a particular use or purpose. Certain factual situations, however, dictate an exception to this rule, such as:

a. Relying on the seller's skill. If a buyer describes a certain item to a seller and further describes what he wants it to do, and the seller recommends a certain product for the use and purpose, then an implied warranty exists for a particular use and purpose.

For example:

1. John Jones goes to Easy-Bargain Store and states that he wants a four burner, self lighting, Easy Fire gas range. Easy-Bargain sells the stove to Mr. Jones. Mr. Jones takes the stove home and discovers that it is of poor quality. Mr. Jones is stuck with the stove as there is no implied warranty in this type of situation.

2. Suppose, however, John Jones goes into a store an says, I need an irrigation pump that will irrigate two thousand acres. The seller states, I have just the pump for you, for the pump that I sell will more than meet your needs. Mr. Jones says, fine, I will take it. Upon taking the pump home, Mr. Jones discovers it will not irrigate two hundred acres, let alone two thousand acres. In this case Mr. Jones is entitled to take the pump back and get his money returned. The reason: there was an implied warranty as to a fitness for a particular use or purpose. Mr. Jones relied on the seller's skill to sell him a pump that would do the job for him.

b. Goods suitable for only one purpose. There are certain types of goods which are special and suited for only one purpose. Goods of this type carry an implied warranty that they will perform this single purpose for which they are designed.

If a party goes into a store and states that he would like to buy a refrigerator to keep food in, he does not expect to have his food spoil in the refrigerator that he buys because it will not stay cold. Anytime a party makes his needs known to a seller, and that he expects to use an item

for a special purpose, that item carries warranty covering that special purpose.

Merchantable Quality. When goods are sold by description or sample, a buyer obtains an implied warranty that he will be able to resell the goods he received by the same description or sample. For example - if a party buys corn, he expects to receive corn, and not corn mixed with beans. There is an implied warranty that the buyer will receive corn.

Fitness For Human Consumption. Any item sold as human food, carries with it an implied warranty that it is fit for human consumption. Any food sold for human consumption which proves to be inedible, is a breach of this implied warranty.

Warranty As To Title. When goods are sold, unless it is otherwise stated, the seller impliedly warrants:

1. the right to sell
2. the right to possession
3. that no one else has a claim against the goods being sold.

Implied Warranties When There Is An Inspection Of The Goods.

Whenever a party inspects the goods he purchases, any defects he should have discovered carries no implied warranty. For example:

John Joe purchases an automobile from Jack Auto. Upon getting the automobile home, all the tires go flat because they are worn out. Mr. Joe cannot make Jack Auto replace the tires, because he should have discovered the tires were worn out before he purchased the automobile.

Sale By Sample. When goods are bought by sample, it is impliedly warranted that the goods delivered will be exactly the same as the sample. If the goods delivered does not confirm to the sample, the buyer does not have to accept them.

Sale By Description. When goods are sold by description only, they carry an implied warranty that they will conform to the description. If the goods do not conform to the description, the buyer does not have to accept them. The best example of the sale of goods by description is the Sears & Roebuck Mail Order Catalogue. When Sears & Roebuck first began doing business it was exclusively a mail order house, and all of its merchandise was sold by description.

The No Warranty Sale. Often when an item is purchased, the purchase agreement will state that the item is sold "as is." What does the term "as is" mean? The term "as is" means that the seller makes no representations, guarantees, or warranties, as to the item being sold. If there is anything wrong with the item it is the buyer's responsibility, and the buyer cannot bring it back to the seller for any reason. The most common example of the "as is" sale is in the case of the purchase of an older used automobile. A party is often in need of cheap transportation, so he goes to a Used Car Lot and buys an old junker. In practically every case, the car is sold under an "as is" contract. If a buyer purchases an automobile under an "as is" contract, and a week later it quits running, the buyer is stuck with it. The buyer has paid for, or will have to pay for an automobile that will not run. BEWARE OF THE "AS IS" SALE - IF THERE IS NOT SOMETHING WRONG WITH THE ITEM BEING SOLD, THEY WOULD GUARANTEE OR WARRANT IT.

The Importance Of Warranties.

Why are warranties important? Warranties form a part of the sales contract. Warranties insure the buyer that he is receiving the product for which he bargained. If there is a breach of a warranty, there is also a breach of the sales contract. If a product goes bad and it is covered by a

warranty, the buyer may get it fixed or replaced for nothing, depending on the terms of the warranty. Or, if the seller refuses to comply with the terms of the warranty, the warranty gives the buyer a right to sue the seller for money damages. A warranty gives the buyer insurance against receiving less than what he bargained and paid for.

Questions And Problems.

1. What is a warranty?
2. What is an express warranty?
3. What is an implied warranty?
4. What is an "as is" sale?
5. What are the three warranties as to title?
6. What is meant by an implied warranty that food is fit for human consumption?
7. Explain what warranty is implied in a sale by a sample?
8. Explain what warranty is implied in a sale by description?
9. Give five examples of an express warranty.
10. What is the importance of an express warranty?

VII. THE CREDIT CARD.

Definition Of A Credit Card. A credit card is evidence of an extension of credit. In today's business world a credit card may be:

1. an installment sales contract
2. a contract for services
3. or, a loan agreement.

In this day and age, a credit card can be used for practically anything in the way of purchases or obtaining money.

Contractual Liability. Each time a credit card is used, contractual liability applies. The use of a credit card is the formation of a contract, whether it be a sales contract, a contract for services, or a contract for borrowing money. The credit card holder is legally liable for the amount the credit card is used for, or the price of the item or service received. In the case of borrowing money on a credit card, the user is liable for the amount borrowed and must pay it back.

How Much Does A Credit Card Cost The User? Many different types of credit card arrangements exist. One should not assume that all credit card arrangements are the same. Before a credit card is used, the user should know how he is suppose to pay for the items charged, and how much it is going to cost him for the privilege of using the credit card.

The thirty day charge. The credit card which requires that anything charged thereto has to be paid within thirty days, normally does not cost the holder anything for its use. Most department stores and other credit card issuers do not charge any service charge or interest for charges paid within thirty days.

WARNING: There are some credit cards which charge a monthly service charge for the privilege of having the credit card whether it is used or not.

The long term charge. The other main type of credit card is the long term charge. Under this arrangement, the user is not required to pay the whole balance, but only a portion of the balance each month. This type of credit card always requires the payment of a monthly service charge for carrying the account. This service charge can be quite expensive. Further, some long term charge credit cards may require the paying of interest upon the balance owed. Both of these items should be determined before obtaining or using a particular credit card.

The Lost or Stolen Credit Card. Whenever a credit card is issued, the party to whom it is issued agrees that he or she will be responsible for all purchases charged to his credit unless the issuer is notified otherwise. In the case where a credit card is either lost or stolen and it falls into the wrong hands, the credit card holder is only liable for charges made on the card prior to the notification, but in no event does the holder's liability for any unauthorized use exceed the lesser of $50.00 or the amount of money, property, or services obtained by such unauthorized use prior to the giving of notice to the issuer.

For example, George Loser loses his wallet with his Easy-Charge-It card in it. Mr. Loser does not discover that his wallet is gone until two days later. Upon discovering the loss, Mr. Loser calls the Easy-Charge-It Company and informs them of the loss of his credit card. However, between the time of the loss and the notification, Sam Thief had charged $300 on

Mr. Loser's credit card. Mr. Loser is liable for only $50.00

Questions and Problems.

1. What is the limit of the holder's liability when his credit card is used illegally?
2. Define what a credit card is.
3. How much does a credit card cost?
4. When a credit card is used, is a contract formed?
5. What should you do upon losing a credit card?

VIII. THE PURCHASE OF AN AUTOMOBILE

Introduction. An automobile is probably the second most costly purchase a person makes during his or her lifetime, especially if it is a new automobile. In the area of sales and purchases of automobiles, people are taken advantage of and cheated more, than in any other area of purchases and sales, unless it would be in the area of purchasing furniture. For these reasons, the purchase of an automobile is given special attention for your benefit.

The Used Automobile. When purchasing a used automobile, one should remember that it probably is not going to perform like a new automobile. Many people do not trade cars unless there is something wrong with the automobile they are trading. But, this is not always the case, for there are people who do trade periodically, and do trade good used cars for new cars.

How do you discover whether or not a used car is in good condition? The following things should always be done before purchasing a used automobile:

1. The party selling the automobile knows who he purchased it from. Ask the seller who the former owner was, and call the former owner and get his opinion as to what he believes the condition of the automobile to be in.
2. Have a mechanic or other knowledgeable person look at the automobile and get his opinion.
3. Always drive a used car before buying it - it may not have any brakes. Sometimes defects in an automobile can be discovered by just driving the automobile.

IF THE SELLER WILL NOT ALLOW YOU TO DO THE THREE FOREGOING THINGS, DO NOT DO BUSINESS WITH HIM! GO SOMEWHERE ELSE. Even if you do all of the foregoing, you still may get stuck with a bad buy, but by doing the foregoing you should be able to discover any apparent defects in the automobile.

Beware Of The Super-Salesman. When you are purchasing a used automobile, think about what you are doing. Can you afford an automobile? Can you afford to fix the automobile if something goes wrong with it? Can you afford insurance and license plates? If you are going to pay for the automobile in installments, what is the cost of the automobile going to be after they have added on the financing charges and interest?

Do not let someone talk you into buying something that you should not buy and cannot afford. Remember, a used car salesman, only gets paid when he makes a sale. Find a salesman who is completely honest about the automobiles he is selling. Ask people in your neighborhood as to who can be trusted and who cannot in the used car field. After enough people have been cheated, the word gets around as to who is not to be trusted.

The "As Is" Contract Revisited. Often times in the case of used cars, and especially older used cars, they are sold "as is". As you have already learned, the term "as is" means that the responsibility of the automobile becomes the buyer's after the purchase. The "as is" automobile is not guaranteed in any manner, and if it only runs for two weeks, that is the buyer's tough luck, he still has to pay for it. When an automobile is sold "as is", the seller relieves himself from all responsibility for the condition of the automobile.

READ WHAT YOU SIGN WHEN YOU PURCHASE A USED CAR. DO NOT RELY ON WHAT THE SALESMAN TELLS YOU ORALLY. If you rely on what a salesman tells you in regards to the condition of the automobile and how he will guarantee it, you are going to get stuck unless it is in writing. Oftentimes, a

salesman tells a purchaser on thing orally, and when the purchaser signs the contract it contains a clause stating that the car is sold "as is". ANY TIME A SALESMAN GUARANTEES OR SAYS THAT HE WILL FIX AN AUTOMOBILE IF SOMETHING IS WRONG WITH IT, GET IT IN WRITING.

The Purchase Price Of A Used Automobile. When you are told a car only costs so much, that will be the price if you pay cash and the full amount at once. If you finance an automobile, be sure you understand what you are doing and what it is going to cost you. A used car is usually never financed by the party who is selling it. The financing is usually turned over to a small loan company. The small loan company pays the seller for the automobile, and then collects it back plus financing and interest charges from the buyer. In Ohio, on loans of $500.00 or less, the loan company can charge up to 36% interest. Oftentimes, when a party buys a car for $400.00 - $500.00, and finances it, the car ends up costing him about double the purchase price. DO NOT FIND OUT THE PURCHASE PRICE IF YOU ARE GOING TO BUY AN AUTOMOBILE ON CREDIT, FIND OUT WHAT THE COST IS GOING TO BE AFTER THE CAR IS FINANCED THROUGH THE LOAN COMPANY. Once you find out what the total cost is going to be after financing, you may not want that cheap automobile.

Warranties On Used Cars. Unless you get the warranty in writing on a used car, you will discover there is no warranties on the car that you bought. When something goes wrong with the used car, the seller will not fix it unless it is in writing that he will fix the car if something goes wrong with it. Therefore, when the seller tells you what a great car he has to sell, make sure that he puts it down in writing and signs it.

The New Automobile. Of course, with the purchase of a new automobile, one does not get the mechanical problems of the used car. However, when purchasing a new car, one should know for how long it is warranted against mechanical failure, and for what it is specifically warranted against. One should also find out if there is anything that has to be done on the part of the buyer in order to make the warranties valid. Sometimes, the buyer is required to do certain things before the warranties are valid.

If the car is financed, as in the case of the used car, the purchaser should find out the cost after the interest and financing charges are added to the price. You may find that the car does not fit into your budget.

Breach Of The Sales Contract And Repossession Of The Automobile By The Seller. In practically every case where an automobile is sold on credit, the contract for sale or the chattel mortgage gives the seller the right to pick up the car without telling the buyer, if the buyer does not make his payments. Missing only one payment will give the seller the right to repossess.

Once the automobile has been repossessed, the seller or the loan company has the right to resell it if the purchaser cannot come up with the balance of the purchase price. As we have already learned, the buyer has to receive notice of the time and place of sale, before he will be responsible for the the difference between the balanced owed and the resale price. BEWARE: NOTICE OF THE SALE WILL BE SENT TO THE LAST KNOWN ADDRESS OF THE PURCHASER. If you move and do not leave a change of address card, you will not receive notice of the sale, and you will still be responsible for the deficiency.

Title To The Automobile. A title to an automobile is very important for two reasons.

First, a title is evidence of ownership. Second, in Ohio, if there are any liens (mortgages) on the automobile, they will be recorded on the certificate of title. A title check can easily be done at the county license bureau.

Always Get A Receipt. Whenever you pay for anything, always get some type of receipt showing what was paid. The best way to pay for anything is by check, that way you have your receipt in the check. Many people have had to pay for things twice because they did not get a receipt. Even if you do not have a checking account, you may still pay by the way of check. Some banks now sell checks which have a carbon copy. The original goes to the party to be paid, and the party doing the paying keeps the carbon copy for his receipt.

Why get a receipt if you are going to throw it away, or put it in a place where you can not find it later. Keep your receipts in an indexed file, so you know where to find them when needed. Every family should have a place to keep important papers.

Questions And Problems.

1. What safeguards should be taken before purchasing a used automobile?
2. Why is a certificate of title to an automobile important?
3. Why should a person always get a receipt when paying for anything?
4. What warranties are there on a used car?
5. What is an "as is" sale?

IX. THE SECURITY AGREEMENT

What Is A Secured Transaction? A secured transaction is a business dealing which involves a risk on the part of one party, and that risk, by agreement between the parties, is reduced by a lien on the personal property of the person not taking the risk, but who is receiving the immediate benefit of the transaction. In laymen's terms, a secured transaction is the mortgaging of property. As in the case of all mortgages, if you do not pay off the lien, the goods will be repossessed.

Transactions Which Usually Involve Security Agreements. A security interest is most commonly involved in the loaning of money, in the sale of goods, or in any extension of credit. What a security agreement does is to guarantee to the party giving the credit or making the sale that if they party to whom the credit is given defaults, there will be specified property which can be taken and sold and applied to the debt. If you exam the retail installment contract closely on pages 68, 69, 70 and 71, you will see that it contains a security agreement. The following are examples of business transactions which involve security agreements:

1. When borrowing money.

John Goodbody is in need of $500.00 to have his teeth fixed. Mr. Goodbody goes to Small Loan Company and tells them his problem. Small Loan says to Mr. Goodbody, our company will be happy to loan you the money, but what do you have that we can have as security for the loan? Mr. Goodbody says to Small Loan, I have five rooms of furniture which is paid for. Small Loan then says to Mr. Goodbody, we will loan you the $500.00 if we can have a security interest (mortgage) in your five rooms of furniture. Mr. Goodbody

agrees and they sign the loan agreement and the security agreement.

What happens if Mr. Goodbody does not repay the loan? Small Loan Company has the right to go out and get Mr. Goodbody's furniture, sell it, and apply the proceeds to the loan balance. The reason Small Loan Company has the right to do this is because of the security agreement which Mr. Goodbody signed when he made the loan. Just as in the purchase and sale situation, Mr. Goodbody is liable for the difference between the sale of the furniture by Small Loan and the balance owed on the loan.

2. The purchase.

In most cases when a purchase is made on credit, the seller will retain a lien (mortgage) on the goods sold. For example:

John Goodbody buys T.V. from Easy-Credit T.V. Sales on time. As a part of the sales agreement, Easy-Credit receives a security interest in the T.V. If Mr. Goodbody does not pay for the T.V., Easy-Credit has the right to go to Mr. Goodbody's home and get the T.V., sell it, and collect the difference between the resale and the balanced owed upon the account.

Filing Of The Security Agreement. The law requires that in order for a security agreement to be valid, it must be filed with the county recorder. The only exception to this rule is the situation which involves the purchase and sale. If the security agreement is not filed as required by law, it is invalid, and of course if it is invalid, the secured party has no right to come out and get the goods covered by the agreement. Once a security agreement has been filed it becomes a matter of public record. These records are kept in the county courthouse, and anyone is free to inspect them.

Questions And Problems.

1. What is a security agreement?

2. To what type of transactions does a security agreement apply?

3. What would a layman call a security agreement?

4. What rights are given to the party who takes the risk and receives the security agreement as a form of guarantee of payment?

5. Why does a security agreement have to be filed with the county recorder? What happens if the security agreement is not recorded as required by law?

X. THE NEGOTIABLE INSTRUMENT

Definition Of A Negotiable Instrument. A negotiable instrument is a paper document which is a form of property that can be exchanged for money.

A negotiable instrument must be:

1. in writing;
2. signed by whomever made it, or is going to pay the amount stated in the instrument;
3. contain an unconditional promise to pay the amount of money stated in the instrument;
4. contain words of negotiability, such as, pay to order or pay to bearer;
5. state a certain amount of money;
6. state when payments are to made under the instrument.

A negotiable instrument always calls for the payment of money, and this is what makes a negotiable instrument valuable. This type of agreement in most cases can be bought and sold just like a piece of furniture.

Examples Of Negotiable Instruments.

1. Paper money. The five or ten dollar bill that you have in your pocketbook is a negotiable instrument. If you will look at a five dollar bill, you will see:

a. It is in writing;

b. It will contain a promise to pay the bearer in United States money;

c. It is signed by the party who will pay - the Treasurer of the United States;

d. It contains words of negotiability - pay to bearer;

e. It is a sum certain - five dollars;

f. It say payment will be made upon demand.

2. Notes. When you borrow money from a bank or loan company, you are required to sign a document called a note which is a promise to pay the money back at a specified rate of interest. In most cases this note can be sold to someone else, and that someone else has the right to collect the money from the party that originally borrowed it.

3. Checks. A check is another form of negotiable instrument. It is a promise to pay a sum certain to whomever legally has it in their possession when presented to the bank.

Questions And Problems.

1. What is a negotiable instrument?

2. What are the six requirements of a negotiable instrument?

3. Give three examples of a negotiable instrument?

XI. BORROWING MONEY

Another Form Of Contract. When you borrow money from a bank or small loan company, you are forming another type of contract. In exchange for a certain sum of money, the person making the loan agrees to pay it back at a specified rate of interest. In Ohio a loan can cost as much as 36% interest per year which means that for every dollar borrowed for a year, a dollar and thirty-six cents will have to be repaid. No one can afford to borrow money at that rate of interest.

Before making a loan one should know the total amount that is going to have to be repaid. Small loans in Ohio carry a high rate of interest making them very expensive. Often the interest rate is stated as being so many percent per month, but in order to find the true interest rate you must multiply the monthly rate by twelve. For example, if a loan costs 1% per month, it costs 12% over the year which is expensive.

Beware The Tactics Of The Small Loan Company. When going to the loan company, beware of their tactic, as they are professionals in the art of loaning money and then collecting it back. Often a loan company will make part of a loan, and then send the borrower to one of their other branches to make the balance of the loan. The reason that they do this is so that they can collect the highest rate of interest allowed by law. If the loan was made at only one place they would have to charge a lesser rate of interest.

When one borrows money, the loan company always asks who else the borrower owes. It is very important to list every one that you owe. If you do not list everyone that you owe, the loan company can later sue you for fraud. Often the man at the loan company will tell the borrower that it

is not necessary to list everyone that the borrower owes. If he says something like that, make sure you get it in writing, or it may lead to your being sued for fraud. If you get such a statement in writing, the loan company would not be able to sustain a fraud suit.

When a mortgage is taken on property in connection with a loan, that mortgaged property cannot be disposed of until the loan is repaid. If the loan is not repaid and the property is disposed of, the borrower is guilty of conversion which carries both civil and criminal liability. You cannot dispose of mortgaged property.

Special Requirements Of The Loan Company For Making The Loan. Often the loan company will require the party borrowing the money to mortgage some of his property in order to obtain a loan. This is usually done through a security agreement. Once the loan company has the mortgage, if the party borrowing the money does not repay it, the loan company can take the property covered by the security agreement, sell it, and apply the proceeds to the balance owed on the loan.

In other situations, the loan company will require a cosigner, or someone who will guarantee the loan. In this situation, if the party borrowing the money does not repay the money borrowed, the loan company can collect it from the cosigner.

Renewing A Loan. Why does a loan company want to refinance a loan when it is overdue? If a loan company can refinance an overdue loan, it can make the interest and late charges on the original loan a part of the principal on the new loan and charge interest on the interest and late charges. When a loan is refinanced, it is going to cost considerably more to pay it off.

The Best Place To Borrow Money. Probably the best place to borrow money, if you work for a company with a credit union, is at the company credit union. A Loan at the credit union will cost less, and more importantly, the credit union will be honest and fair. Another place to borrow money is at a bank. A bank will usually be fair.

If you have to borrow money at a small loan company, be sure you know what you are doing, and more importantly, be sure that you can afford to borrow money from the small loan company.

Questions And Problems.

1. Why is it important to tell a loan company every one that you owe when making a loan?
2. What is the highest rate of interest that can be charged in Ohio on a loan?
3. Why are loan companies more than willing to refinance loans?
4. What should a borrower check before making a loan?
5. Is a borrower free to dispose of mortgaged property at any time he chooses?

I. CREDITOR'S RIGHTS

Who Is A Creditor? A creditor is someone to whom money is owed by a party called a debtor.

Collecting A Debt. A creditor has the right to collect money which is legally owing to him, and he has several methods available.

1. The collection agency. The first method usually employed by the creditor is to turn the debt over to a collection agency. The collection agency in turn, tries to get the party owing the money to the creditor to pay the debt. Of course, the collection agency gets paid out of the money they collect, and the methods they used were not always fair. However, on March 20, 1978, a new law became effective which was meant to eliminate abusive debt collection practices. Basically, under the new law, a debt collector may only communicate with certain persons, but he may not identify himself as a debt collector nor may he state that the reason for the call or visit is because the debtor has not paid his debts. Communication with third parties is limited to one time, unless collector believes the information given was incorrect or incomplete. After the collector learns that the debtor is represented by an attorney, he (the collector) may only communicate with the attorney. Communication with the debtor may only be during reasonable hours. The collector may not go to the debtor's place of employment.

Harrassment is forbidden. The debt collector may not threaten violence, he may not use obscene or profane language. Any misrepresentation or unfair

practices on the part of the debt collector are forbidden.

The law provides for civil liability for any debt collector who does not comply with the provisions of the law. The injured debtor may recover actual damages, costs and if there is evidence of bad faith on the part of the debt collector, the debtor may recover attorney fees.

This new law does not, however, prevent the debt collector from validating a debt, although he is required to include in the notice certain specific information.

Note, that this is a federal law.

(Public Law 95-109
Title VIII ,801 et. seq.)

2. The lawsuit. Another method of collecting a debt is through the lawsuit. If a creditor cannot collect a debt any other way, he will institute a lawsuit against the debtor for the amount that is owed. Through the lawsuit the creditor will hope to scare the debtor into paying the debt. As we have already learned the creditor will try to obtain a money judgment against the debtor. Once the creditor has obtained the judgment he has several methods for enforcing the judgment.

3. The garnishment. The most widely known method of collecting a debt is through the garnishment of wages. However, what few people seem to know is that they have to be sued and a judgment obtained against them before a garnishment can be filed against them. Only after it has been legally determined through a court judgment that money is owing to a creditor can a garnishment be filed against a debtor. Further, before a garnishment can be filed, a fifteen day statutory demand notice must be sent to the debtor

demanding payment of the debt. This notice is only required to be sent to the debtor's last known address. If the debtor has moved or refuses to accept the letter containing the notice, the law says that he has received the necessary notice. It is the debtor's duty to put on a change of address card with the post office department or accept the letter.

Once a judment is obtained against the debtor and the fifteen day demand notice is sent to the debtor's last known address, the creditor is free to garnish the debtor's wages.

4. Replevin. A replevin is a legal method of repossessing mortgaged goods when they are not being paid for. If a party buys a house full of furniture and then refuses to pay the seller for it or return the goods to the seller, the seller can ask the court for an order requiring the buyer to return the furniture. Once the court orders the goods returned, it will send the sheriff to where the goods are to make sure the goods are returned. For example:

John Nogood buys a T.V. from Good T.V. Sales on a retail installment contract. Mr. Nogood makes the first payment and then refuses to pay any more. Good T.V. Sales tells Mr. Nogood that he has to return the T.V. but Mr. Nogood refuses. Good T.V. Sales files a replevin suit with the court and it asks the court to order the return of the T.V. to it. The court finds that Good T.V. Sales is entitled to the return of the T.V., and orders Mr. Nogood to return it. In order to insure the T.V.'s return, the court sends the sheriff out with Good T.V. to repossess the T.V.

In the replevin case, after the goods have been repossessed, the creditor upon giving notice to the debtor of the time, place, and date of

sale, has the right to resell the goods to someone else and apply the proceeds to what the debtor owes. Here also, the debtor is still responsible for the difference between the resale price and the balanced owed.

5. Attachment. After a judgment has been obtained against a debtor, the creditor has the right to have the sheriff seize any property of the debtor which is not mortgaged or exempt by law from attachment. (Property which is exempt from being taker by a creditor is discussed later in this work.) The seizing of a debtor's unmortgaged property by the creditor is called an attachment. After an attachment is made, unless the debtor pays the creditor, the creditor can have the debtor's property sold through what is know as a sheriff's sale and apply the proceeds of the sale to what is owed to the creditor. For example:

Joe Moe owes the Sure Loan Company $1,000.00 on a loan which is overdue. Sure Loan sues Mr. Moe for the $1,000.00, and they obtain a judgment against Mr. Moe for the $1,000.00. Mr. Moe owns a 1969 Chevrolet automobile which is unmortgaged. Sure Loan has the sheriff seize Mr. Moe's automobile. The automobile is subsequently sold at public auction conducted by the sheriff. The proceeds of the sale are applied to the $1,000.00 debt that Mr. Moe owes Sure Loan Company. If the car is sold for an amount in excess of $1,000.00, the balance left after paying the debt to Sure Loan will be given to Mr. Moe.

6. The judgment debtor examination. Oftentimes when a creditor obtains a judgment against a debtor, he knows nothing about the debtor's situation. The creditor can make the debtor come to court and answer questions about his or her affairs through what is known as a judgment debtor examination. The creditor may ask such questions as, do you have any bank accounts, bonds,

stocks, or any type of securities. He may ask where the debtor works, if he or she owns an automobile, furniture, and etc. The purpose of these questions is to discover what method is going to be used to collect the debt owing to the creditor from the debtor. If the creditor knows who the debtor works for, the debtor's wages can be garnisheed. If the debtor owns any property, it can be attached by the creditor and sold to pay the debt.

What happens if the debtor fails to appear in court for the debtor exam? If the debtor does not appear in court on the date stated in the notice sent to the debtor, the sheriff will go out and take the debtor into custody and forcibly bring him or her to court. After the sheriff gets the debtor into court, the debtor must answer the questions asked of him, or the court will hold him in contempt of court and put him in jail.

7. Repossessed merchandise and its' sale.

a. Equity of redemption. After goods have been repossessed, in some cases if the debtor acts promptly, they can be gotten back. In order to get them back, however, it is usually necessary to pay the creditor the whole amount that is owed. Also, this must be done immediately, and in every case, before the sale of the goods or it is too late. The aforestated process is a legal procedure known as "equity of redemption."

b. Notice of sale. As we have already seen, the seller has the right to resell goods after they have been repossessed. Before the sale though, the buyer who originally bought the goods is entitled to know the date of the sale, the time of sale, the place of sale, and how much the goods are valued at. The seller required to give this notice to the party from whom the goods were repossessed.

c. Notice of sale is sent to the debtor's last known address. The notice of the sale of the repossessed goods is sent to the buyer's last known address, which will usually be the same address from which the goods were repossessed. If the seller is not notified of a change of address, or if a change of address card is not given to the postal authorities when a move is made, the buyer will not receive notice of the sale.

d. Responsibility of the buyer when the seller fails to give notice of the resale. Even if goods are repossessed, the buyer has to pay the seller the difference between the resale price and what is owed. But if the seller fails to give notice of the resale to the buyer, the buyer owes the seller nothing.

8. Deficiency judgment. After the property is repossessed and sold, if the creditor has given the debtor notice of the time, date, and place of sale, he may sue the debtor for the difference between the sale and what is owed if the debtor does not pay. If the creditor obtains a judgment in this case, it is called a deficiency judgment. After the judgment is obtained the creditor is free to collect it by using any of the above methods.

9. A judgment lien. Once a judgment is obtained, it may become a lien on real estate. If a party who is liable on a judgment owns real estate, the party obtaining the judgment may file it against the real estate. Then, if the real estate is sold, the lien or judgment will be paid. For example:

Joe Farmer owns a 200 acre farm. John Machine obtains a judgment against Mr. Farmer because Mr. Farmer did not pay Mr. Machine for the combine that he sold to Mr. Farmer. Mr. Machine files the judgment against Mr. Farmer's land.

If Mr. Farmer's land is sold the lien will get paid.

Questions And Problems.

1. What is a judgment lien?
2. What is a replevin?
3. What is the definition of a creditor?
4. Discuss the various methods a creditor has available to collect a debt.
5. What is the result of the creditor not giving notice of the time, date, and place of sale of repossessed goods?
6. Where must the notice of sale of repossessed goods be sent?
7. What is a judgment debtor examination?
8. What is a garnishment?
9. When can a garnishment be filed?
10. Discuss the repossession and sale of mortgaged goods.
11. What is an attachment?
12. When can goods be attached?
13. Can mortgaged goods be attached, and if not, why not?
14. What is a deficiency judgment?
15. When can a deficiency judgment be obtained?

II. DEBTOR'S RIGHTS

The person who owes money known as the debtor, or the party who has paid money for goods or services have certain rights which they can enforce.

Enforcement Of The Contract. If the seller or lender refuses to perform a part of the contract, the buyer or debtor can take legal action.

1. Injunction. In a few special cases, the seller or creditor may be made to perform a contract whether he wants to or not. However, only in the case of a sale of an item which is the only one in the world or in the case of the performance of a special service is this possible. For example:

John Jones contracts with Joe Blue to sell Mr. Blue an original oil painting. When Mr. Blue goes to get the painting and complete the terms of the contract, Mr. Jones refuses to give the painting to Mr. Blue. In this case, the court will force Mr. Jones to give the painting to Mr. Blue. The reason: the painting is the only one in the world and neither money nor anything else will replace the painting.

2. The lawsuit and damages. In the normal case the only alternative the debtor has is to sue the creditor or seller for damages when the seller or creditor has breached their contract. The real problem for the debtor is to prove how he was damaged. Consider the following examples:

a. The Easy Credit T.V. Sales contracts with Dick Browne to sell him a T.V. set for the regular retail price, the same price the set can be bought for at any place in town. When Mr. Browne goes to pick up the T.V. that he purchased and to pay for it, Easy Credit informs Mr. Browne that they have sold his T.V. to someone else. Here there has been a breach of

contract, but Mr. Browne is not damaged. The reason: Mr. Browne can go to any other place in town and buy the same television for the same price. Mr. Browne has lost no money because of Easy Credit's action, he has only been inconvenienced.

b. Bill Shell contracts with Hill-Tight Motors to purchase a used car. As a part of the agreement Hill-Tight guarantees the motor in the car for 5,000 miles against any defects. After 1,000 miles the motor quits and needs replacing. Mr. Shell takes the car back to Hill-Tight to have the motor replaced, but Hill-Tight refuses to replace the motor. Mr. Shell sues Hill-Tight for breach of contract. Mr. Shell's damages is the cost of replacing the motor. Mr. Shell is entitled to a judgment against Hill-Tight for the amount it will cost to replace the motor.

Judgment Before Garnishment. Before a garnishment can be obtained on a debtor's wages, a judgment must have been rendered by a court against the debtor and in favor of the person filing the garnishment. Only after a judgment has been obtained can a garnishment be filed against a debtor's wages.

What Is A Garnishment? A garnishment is a legal method which allows a creditor to get a portion of a debtor's wages to satisfy a judgment. The creditor files the garnishment with the court and tells the court that the debtor owes the creditor money and that the debtor's employer is holding money for the debtor for work done, and that the creditor is entitled to a portion of the money being held. The garnishment is then sent to the debtor's employer, and the employer is required by law to withhold the amount ordered by the court from the debtor's wages.

In some cases, the debtor's whole check may be taken.

Fifteen Days Notice Before Garnishment. A debtor is entitled to receive fifteen days notice that his wages are going to be garnisheed if he does not pay what he owes the creditor within fifteen days of the notice. If the debtor does not receive a fifteen day notice that his wages are going to be garnisheed, the garnishment is unlawful and a portion of the debtor's wages cannot be taken.

WARNING. The law only requires that the fifteen day notice be sent to the debtor's last known address. If the debtor moves without leaving a forwarding address with the postal authorities, the notice will not be received, but all legal requirements will have been met if the notice was sent to the address and returned for garnishment. The fifteen day notice is sent by either registered or certified mail which requires the debtor's signature in order to get the notice. If the debtor refuses to sign for the letter, the legal requirements still have been met for garnishment. The following is an example of a fifteen day demand notice for the payment of a debt before garnishment:

NOTICE OF COURT ACTION TO COLLECT DEBT No - Note This Is A Replica
(Ohio Revised Code 2715.02; Eff. 11-21-73)

NOTICE OF COURT ACTION TO COLLECT DEBT

Date of Mailing_____

TO:_____
(Name of Debtor)

_____
(Address of Debtor)

You owe the undersigned_____
(Name of Creditor)

$_____, for which a judgment was obtained against you in the_____

_____court on _____payment of which is hereby demanded.

If you do not pay within fifteen days of the date of the mailing of this notice we will go to court and ask that your employer be ordered to withhold money from your earnings and pay it to the court to satisfy your debt. This is called garnishment.
It is to your advantage to avoid it because the placing of the extra burden on your employer can cause you to lose your job.
YOU CAN AVOID GARNISHMENT BY DOING ONE OF THESE THREE THINGS WITHIN THE NEXT FIFTEEN DAYS:

(1) Pay to us the amount due;
(2) Complete the attached form entitled "Payment To Avoid Garnishment" and return it to us with the payment, if any, shown due on it; or
(3) Apply to your local municipal or county court or, if you are not a resident of Ohio, to the municipal or county court in whose jurisdiction your place of employment is located, for the appointment of a trustee to receive the part of your earnings that is not exempt from garnishment. You will be required to list your creditors, and the amount you will then pay to your trustee each payday will be divided among them until the debts are paid off. This can be to your advantage because in the meantime none of those creditors can garnish your wages.

_____
(Name of Creditor)

_____
(Signature of Creditor or His Agent)

_____

_____

Note: Ohio Revised Code 2715.02 provides that the above demand shall be made after judgment is obtained, by delivering such demand to the debtor by personal service by the court or by sending it to the debtor by registered or certified letter, return receipt requested, at his usual place of residence at least 15 and not more than 45 days before the order of attachment against personal earnings or the order in aid of execution against personal earnings is sought.
Form replica continued on next page.

Form replica continued.

PAYMENT TO AVOID GARNISHMENT

TO: _____
(Name of Creditor)

_____
(Address of Creditor)

_____

To avoid the garnishment of which you have given me notice I enclose $_____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

1. Total amount of indebtedness demanded: (1) $_____

2. Enter the amount of your earnings after deductions required by law, owed to you for the previous pay period (but do not enter earnings owed for a period exceeding one month): (2) $_____

3. Enter your pay period (weekly, bi-weekly, semi-monthly): (3) $_____

4. Enter an amount equal to 25% of the amount on line 2: (4) $_____

5. (A) If you are paid weekly, enter thirty times the current federal minimum hourly wage; if paid bi-weekly, enter sixty times the current federal minimum hourly wage; if paid semi-monthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: (5A) $_____

Consider the following examples:

a. John Doe obtains a judgment against George Smith in the amount of $500.00. Mr Doe files a garnishment against Mr. Smith's wages without sending him a fifteen day notice demanding payment. This garnishment is invalid because the law requires a fifteen day notice before garnishment, and this was not complied with in this case.

b. John Doe obtains a judgment against George Smith in the amount of $500.00. Mr. Doe sends a fifteen day notice demanding payment to Mr. Smith's last known address. Unknown to Mr. Doe, Mr. Smith has moved and left no forwarding address, so he does not receive the notice. Mr. Doe then files a garnishment against Mr. Smith's wages. The garnishment is valid because the law only requires a fifteen day notice to be sent to a debtor's last known address.

c. In the illustration above, suppose Mr. Smith has not moved, but instead he refuses to accept the letter containing the fifteen day demand notice. The garnishment is still valid, because the law implies that the debtor has received notice through his refusal to accept the notice.

Questions And Problems.

1. What is necessary before a person's wages can be garnisheed?
2. How may a debtor enforce a contract?
3. What is a garnishment?
4. What is a fifteen day statutory demand notice?
5. Where must a fifteen day statutory demand notice be sent?
6. What is the effect of refusing a fifteen day statutory demand notice?

III. A DEBTOR'S EXEMPTIONS

What Is An Exemption? A person who owes money, who is known as a debtor, has property which is free from being taken by the parties he owes, so long as the property is unmortgaged. Only if the property is unmortgaged, is it free from being taken, and it must be in that class of property that is exempt.

Property Which Is Free From Attachment. (O.R.C. & 2329.62 to .83)

a. Clothing. All of a debtor's clothing not exceeding $300 in value is free from being taken to satisfy a debt. Expensive jewelry, furs and the like are not included in the classification of clothing.

b. Wages. A portion of a debtor's wages are free from being taken each month to satisfy debts. The formula for figuring how much of a debtor's wages are exempt from garnishment are as follows:

Ohio Law provides (O.R.C. & 2329.62.1)

Wages that are exempt are the greater of

1) If paid weekly, 30 times the current federal minimum hourly wage; if paid bi-weekly, 60 times the current federal minimum hourly wage; if paid semi-monthly, 65 times the current federal minimum hourly wage; or if paid monthly, 130 times the current federal minimum hourly wage which is in effect at the time the earnings are payable. OR

2) 75% of the disposable (net) earnings owed to the debtor. However, the federal exemption of 25% of disposable weekly earnings preempts state formula.

In Ohio, a creditor cannot have more than 1 successful garnishment in any 30-day period. Further, the Federal Consumer Credit Protection Act provides that a debtor cannot be discharged by his employer for any ONE indebtedness.

c. Furniture. Any married person or head of a household can hold $600.00 worth of unmortgaged free from attachment. If a party is single, the amount of furniture that is exempt is much less.

d. Tools used in a trade. Any tools used on a debtor's job is free from being taken so long as there is not a mortgage on them.

e. Bedding and a cooking stove. Bedding and a cooking stove are free from being taken to satisfy debts so long as they are not mortgaged.

f. Automobiles. In Ohio automobiles are not free from being taken to satisfy debts, even if the automobile is unmortgaged.

For example:

John Smith obtains a judgment against George Jones in the amount of $10,000.00. Mr. Jones refuses to pay the judgment. Mr. Jones owns a 1970 Buick which is unmortgaged. Mr. Smith asks the court to take Mr. Jone's automobile to help satisfy the judgment. The court orders the Sheriff to pick up Mr. Jone's automobile and to sell it at public auction. The car is then sold at a Sheriff's sale for $5,000.00. The $5,000.00 is given to Mr. Smith as partial payment of the $10,000.00 judgment.

g. Bank accounts. Bank accounts are the same as automobiles in Ohio - they can be taken to pay judgments. Bank accounts can be garnisheed in the same manner as wages. The only notice that a bank account is going to be garnisheed is the fifteen day statutory demand notice which is sent to the debtor by the creditor.

h. Real estate. Only a portion of a debtor's real estate is free from being taken by a creditor for the payment of a judgment. In order to qualify for this exemption the debtor must be married and living with his or her spouse.

This exemption is known as the "homestead exemption." In Ohio the maximum amount of a debtor's real estate that is free from being taken to satisfy a judgment is $1,000.00, and this is for both the husband and wife.

1. Cash. If a debtor has unmortgaged property which can be taken by the sheriff and sold to pay the judgment, the debtor can claim the first $500.00 from the sale as being exempt from attachment. This exemption does not apply to automobiles, bank account, or wages.

Questions And Problems.

1. Are unmortgaged automobiles free from being taken to satisfy judgments in Ohio?
2. What is an exemption?
3. Name three items of property which are free from being taken to satisfy a judgment in Ohio?
4. Are bank accounts free from attachment in Ohio?
5. Is any type of notice required before a bank account is taken?

WARNING. THE FOREGOING EXEMPTIONS ARE BASED ON OHIO LAW, AND EXEMPTION LAWS VARY FROM STATE TO STATE.

IV. RELIEF FROM FINANCIAL BURDEN

Introduction. A debtor need not live in fear of being sued, garnisheed, or harassed by people he owes money. Relief is available. No one wants financial problems, but there are many reasons why people have financial problems. Among the main reasons are poor money management, divorce, medical problems, just to name a few. If financial problems do arise, it is the debtor's own failure to act if they continue.

The Trusteeship. In Ohio the law provides for a method of relief from financial problems. When a party has problems with his creditors, he or she can apply with the state court for the appointment of a trustee. Under the trusteeship, the debtor must pay into the trustee a portion of his wages which the trustee in turn disburses to the debtor's creditors. The biggest problem with this arrangement is that any creditor who holds a mortgage on any of the debtor's property cannot be included. The debtor must still pay the creditor who holds the mortgage outside the trusteeship. Under the trusteeship the debtor does receive protection from garnishment. This could save a job.

The Wage-Earner Plan Under Chapter 13 Of The United States Bankruptcy Act. For the person who has financial problems, and for the person who wants a workable method for paying his bills, the Wage-Earner plan is the best method for payment of those bills.

The Wage-Earner plan is authorized under Chapter 13 of the United States Bankruptcy Act, and it is administered by the District Courts of the United States. Under the Wage-Earner plan, the debtor asks the court to give him or her an extension of time to pay his or her debts or a reduction in the amount

that he or she has to pay to his creditors each month. Further, in most cases, the debtor gets to keep all of his property. Another advantage of the Wage-Earner plan is that it helps to manage a debtor's money. The debtor makes one monthly payment into the court, and the Chapter 13 trustee pays it to the debtor's creditors. During the time that the debtor is in the Wage-Earner plan, his creditors cannot bother, harass, or sue his cosigners, nor can his creditors harass, sue, or garnishee the debtor, himself. The court gives complete protection to the debtor while he is in the Wage-Earner plan, and will not allow creditors to do anything which will endanger the debtor's job.

The Wage-Earner plan provides a method for the payment of bills when creditors are putting so much pressure on the debtor that he is in danger of losing his or her job.

Bankruptcy. When a debtor's financial position is such that he cannot pay his bills and have enough left to live on, he must seek financial relief. Bankruptcy discharges a person from the legal obligation of paying his debts. After a bankruptcy discharge is granted, the debtor is not legally required to pay the debts listed on the bankruptcy. Once a bankruptcy discharge is granted, the bankrupt cannot be sued or garnisheed by the creditors listed with minor exceptions.

Bankruptcy differs from other methods of financial relief in that the bankrupt loses practically everything he owns. The foregoing exemptions also apply to bankruptcies. After the exemptions, all of the debtor's assets are taken and sold, and the proceeds are then divided amongst the creditors. Bankruptcy strips the bankrupt of practically everything he owns, while relieving him of the obligation to pay.

Questions And Problems.

1. Name three methods of obtaining relief from financial problems.
2. What is a trusteeship?
3. What is a Wage-Earner plan?
4. What is bankruptcy?
5. Under what court's supervision are Wage-Earner plans supervised?

V. A NEW LAW TO HELP PROTECT THE CONSUMER

Truth In Lending - What Is It? On July 1st, 1969 a new Federal law went into effect which is designed to help the consumer who has to buy on credit. Prior to the new truth in lending law, consumers who purchased on credit were being taken advantage of through hidden credit charges, monthly interest charges which when figured were greater than what appeared on their face, and other devious methods involving the extension of credit. The new truth in lending law requires that the finance charge and the annual interest rate be disclosed to the creditor when credit is extended. Truth in lending applies to all extensions of credit for which a finance charge is or may be payable or which is repayable in more than four installments. Truth in lending applies to banks, savings and loan associations, credit card issurers, credit unions, automobile dealers, consumer finance companies, residential mortgage brokers, doctors, dentists, hospitals, professional people, and craftsmen - such as plumbers and electricians, to name a few. The maximum amount that truth in lending applies to an extension of credit is $25,000.00. This maximum does not apply to real estate transactions. All real estate transaction come under the truth in lending law.

Briefly stated, truth in lending requires the creditor to tell the consumer how much the credit is going to cost him or her. Further, truth in lending requires the creditor to disclose to the consumer all of the financial aspects of the transaction. (Reg. Z & 226.9(a))

The Following Are Examples Of Disclosures Pertaining To Financial Transactions.

Example 1 - Loan Disclosure

(RL 6.5)

DISCLOSURE STATEMENT OF LOAN

_____ _____ _____
Date of Transaction Loan No. Date Disclosure Made To Borrower

Borrowers:_____
(Names) (No., Street or R.F.D.) (City) (State) (Zip)

Lender:_____
(Lender's Names) (No. and Street) (City) (State) (Zip)

This loan is: __+Secured. ___Unsecured.

If secured the type of Security Interest is: __Uniform Commercial Code __Real Property Mortgage __Lien __Other:_____

See: __Note __Mortgage __Security Agreement __Other:_____ which Instrument(s) contain a clear indentification of the property to which the Security Interest relate(s), a completed copy of said instrument(s) having been furnished Borrower.

Security Interest: __will secure future or other indebtedness.
__will cover after acquired property.

DISCLOSURES REQUIRED BY FEDERAL LAW

Payment Terms: The obligation is payable: in a single Payment_____(mos.) (yrs.) after date or in_____equal __monthly __quarterly __semi-annual __annual installments, commencing on the _____day of _____, 19__, and on the same day of the above periods thereafter; plus an irregular payment of $_____due on_____,19___.

The Finance Charge applies from_____,19___.

Balloon Payment: If any, and conditions if any for refinancing same if not paid when due. $_____.
Conditions:_____.

Default Charge: If any installment stipulated herein, is not paid on or before its due date, Lender may charge 2 cents for each dollar becoming delinquent but in no event more than $5.00 per charge. This charge may be imposed for each two (2) months period of such delinquency.

Rebate for Prepayment in Full: If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the Borrower shall receive a rebate of precomputed interest computed under the Actuarial Method.

Prepayment Penalty: Amount_____; method of computing: _____; conditions under which imposed:_____

_____

1. Loan Proceeds

2. Other Charges to be financed: $_____

a.	Recording fees	_____
b.	Title Exam	_____
c.	Title Insurance	_____
d.	Legal Fees, Drafting Documents	_____
e.	Notary Fees	_____
f.	Appraisal Reports	_____
g.	Credit Reports	_____
h.	Other: _____	_____
	_____	
	_____	

Total Other Charges $_____

3. Less: Prepaid Finance Charge_____
Required Deposit Balance_____

Total Prepaid Finance Charge and Required Deposit Balance $_____

4. Amount Financed (No. 1 plus No. 2 minus No. 3) $_____

5. Finance Charges

a.	Interest	_____
b.	Points	_____
c.	Other:_____	_____

Total Finance Charge $_____

6. Total of Payments $_____

7. Annual Percentage Rate _____%

ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES

The undersigned Borrowers do herewith acknowledge receipt of the Disclosures contained herein. They further acknowledge that at the time they received a copy of this statement, it was complete to the extent required, and that the completed blanks, were so completed prior to their signing this

statement. In addition, Borrowers acknowledge that they have received the Disclosures contained herein prior to their affixing their signatures to the Instrument evidencing their indebtedness.

(Witness) (Date Disclosures Received) (Signature of Borrower(s)

(Witness) (Date Disclosures Received) (Signature of Borrower(s)

The disclosure statements as to installment loans, secured credit sales, and unsecured credit sales, are basically the same as the above disclosure statement, however, each contain provisions characteristic to the type of transaction it is. A DISCLOSURE STATEMENT SHOULD NEVER BE SIGNED UNLESS IT IS COMPLETELY UNDERSTOOD!

Example 2 - A Disclosure Statement When An Extension O Time Is Given To Pay A Credit Obligation

DEFFERRAL OR EXTENSION FORM

Date:_____ Loan No._____

Borrower:_____
Name Address City State

Lender:_____
Name Address City State

1. The amount deferred or extended $_____

2. Date to or period for which the obligation is deferred or extended _____,19___

3. Charge for deferral or extension $_____

The above named Borrower hereby acknowledges that he (she) has applied to the above named Lender, for a deferral or extension on the obligation identified by the above loan number of the Lender, and hereby acknowledges that

the items 1, 2, and 3 above were completed and disclosed to him (her), prior to Borrower affixing his signature below.

_____ _____

Witness Borrower

_____

Date

Truth In Lending And Real Estate. As has been previously stated, truth in lending applies to real estate. In the purchase of real estate on credit, the lender of the money must disclose to the borrower the finance charge and the annual interest rate. Truth in lending and real estate is not limited to the purchase and sale of real estate. Truth in lending applies to any transaction which results in a mortgage on the real estate itself. Repair, replacement of a furnace, a hot water heater, or addition on to the home on credit would be examples where the finance charge and annual interest rate would have to be disclosed. The following is an example of a disclosure statement for transactions pertaining to real estate:

Example 3 - DISCLOSURE STATEMENT OF LOAN SECURED BY REAL PROPERTY

_____ _____ _____

Date of Transaction Loan No. Date Disclosures Made to Borrowers

Borrowers:_____

(Print Full Names) (No., Street or R.F.D.) (City) (State) (Zip)

Lender:_____

(Lender's Names) (No. and Street) (City) (State) (Zip)

Type of Security Interest: __Real Property Mortgage __Uniform Commercial Code __Other:_____

A clear identification of the property to which the security interest(s) relates is specifically described in the __Mortgage __Security Agreement __Other:_____, which evidence the security interest(s), a completed

copy of said instruments(s) having been furnished Borrowers.

Security Interest: __will secure future or other indebtedness.
__will cover after acquired property.

DISCLOSURES REQUIRED BY FEDERAL LAW

Payment Terms: Payable in_____equal monthly installments of $_____, commencing on the _____day of _____, 19_____, and on the same day of the month thereafter, plus an irregular payment of $_____due on the _____day of _____, 19_____.

The Finance Charge applies from _____
Date

Balloon Payment: If any, and conditions, if any, for refinancing same, if not paid when due. $_____

Default Charge: In case of default of ten days or more in making any of the payments stipulated herein when the same becomes due, penalties for any default in payment shall be at the rate of 1% per annum on the principal balance at the beginning of the month in which such default occurs until no default exits.

Prepayment Charge: In the event the entire amount of the obligation, which is the subject of this transaction, is paid within three years from the date of this transaction, Borrower is liable for a penalty equal to 1% of the amount of his original obligation.

Unearned Finance Charge: Interest will be charged only upon unpaid balance for period outstanding.

1.	Loan proceeds	$_____
2.	Other Charges to be Financed	
	a. Premium, Credit Life Insurance	_____
	b. Premium, Physical Damage Insurance	_____
	c. Recording Fees	_____
	d. Title Exam Fees	_____
	e. Title Insurance	_____
	f. Legal Fees, Drafting Documents (not if paid by seller)	_____
	g. Escrow Deposits for Taxes and Assessments	_____
	h. Notary Fees	_____
	i. Appraisal Fees	_____
	j. Credit Reports	_____
	k. Other:_____	_____
	_____	
	Total Other Charges	$_____

3. Less: Prepaid Finance Charge _____
Required Deposit Balance _____

Total Prepaid Finance Charge
and Required Deposit Balance $_____

4. Amount Financed (No.1 plus No.2 minus No.3) $_____

5. Finance Charges (Not Required for loans secured by first liens on dwellings made to finance purchase of same)

a. Interest _____
b. Points _____
c. Other: _____ _____

_____

Total Finance Charge $_____

6. Total of Payments(Not required under same conditions as No. 5 above.) $_____

7. Annual Percentage Rate _____%

INSURANCE DISCLOSURES

Physical Damage Insurance, if written in connection with this Secured Transaction, may be obtained by Borrowers through any duly authorized Agent or Broker of their choice, subject only to Lender's right to refuse to accept any insurer offered by Borrowers, for reasonable cause. If such insurance is procured by Lender, with the Insurance Premiums financed as a part of this loan, the cost will be $_____for the term of the credit.

Credit Life Insurance, is not required to obtain this loan, purchase of such through Lender being voluntary on Borrower's part. No such credit insurance is provided unless Borrower signs the accompanying statement. The cost of such insurance is $_____ for the term of the credit, based upon current rates and classifications.

I DESIRE CREDIT LIFE INSURANCE: _____
(Signature of Borrower) (Date)

ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES

The undersigned Borrowers, do herewith acknowledge receipt of the Disclosures contained herein. They further acknowledge that at the time they received a copy of this statement, it was complete to the extent required, and that the completed blanks were so completed prior to their signing this statement. In addition, Borrowers acknowledge that they have received the

Disclosures contained herein prior to their signing the Instrument evidencing their indebtedness.

(Witness)	(Date Disclosures Received)	(Signature of Borrower)

*Note - this is only one form of a disclosure, they will differ from lender to lender.

The Right To Cancel Transactions Involving Real Estate. The new truth in lending law provides that the creditor must inform the consumer that he has three business days in which to cancel any transaction involving real estate. This means, a party obtaining credit which would result in a mortgage on real estate can call the deal off within three business days after the deal is made. How does the creditor inform the consumer he has the right to cancel within three business days? The creditor must give the consumer a written notice like the one below:

NOTICE OF RIGHT OF RESCISSION

_____
(Identification of Transaction)

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW:

You have entered into a transaction on _____ which may result
(date)
in a lien, mortgage, or other security interest on your home. You have a legal right under Federal law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you.
If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying:

_____
(Name of Creditor)

at _____
(Address of Creditor's Place of Business)

by mail or telegram sent not later than midnight of _____
(Date)

You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction.

_____ _____
(Date) (Customer's Signature)

I, the Customer, hereby acknowledge receipt of 2 copies of the aforesaid Notice of Right of Recission which have been given to me this _____day of _____,19_____.

_____
(Customer's Signature)

How A Transaction Is Cancelled. A borrower may cancel a credit transaction involving real estate by:

a. By signing the above form, dating it, and mailing it to the creditor within three business days of its date:

b. By signing the above form, and delivering it to the creditor at the address stated thereon in person or by a messenger within three business days of its date:

c. By sending a telegram to the creditor giving him a brief description of the transaction, and telling the creditor that it is cancelled, within three business days of the date of the transaction:

d. By letter, giving a brief description of the transaction and telling the creditor that the transaction is cancelled. The letter may be either mailed to the address stated on the notice or delivered personally

at the stated address, but it must be done within three business days of the transaction.

YOU CANNOT CANCEL A CREDIT TRANSACTION RELATING TO REAL ESTATE BY A TELEPHONE CALL. THE CANCELLATION HAS TO BE IN WRITING.

You May Waive The Right To Cancel. A consumer may waive the right to cancel the transaction within three business days if he or she should so chose. A borrower should be certain to read and understand what he or she is signing, as it may be a waiver of a very important privilege. If there is a waiver of the right to cancel, the transaction cannot later be cancelled.

Penalties And Remedies.

a. Criminal liability. For willfully and knowingly violating the truth in lending law, a creditor may be fined $5,000.00, or imprisoned for one year, or both.

b. Civil liability. An intentional failure of a creditor to disclose to a customer the finance charge or annual interest rate may make the creditor liable to the customer for twice the amount of the finance charge, but not less than $100.00 nor more than $1,000.00. In addition to the aforestated money damages, the borrower may also recover the costs of court and attorney's fees. Further, if there is a failure to disclose the finance charge or the annual interest rate and it is intentional, the transaction will be declared void. A creditor will not be held liable if the failure to disclose was a real mistake.

The Federal Garnishment Law. On July 1st, 1970 another section of the truth in lending law goes into effect - the so-called federal garnishment law. Under this law a creditor cannot take from a debtor's paycheck more than 25% of his

weekly disposable earnings, or in the alternative, the amount which exceeds 30 times the federal minimum hourly wage - the amount over $48.00. The creditor will still be free to file the garnishments, and as far as job security is concerned, it is not the amount of money that is taken, but rather, the number of garnishments a debtor receives on his job is the important consideration.

Questions And Problems.

1. Discuss the truth in lending law and what it purports to accomplish.
2. Under the truth in lending law what must a creditor disclose to a borrower?
3. What type of loans or extensions of credit can be cancelled within three days of its making?
4. What are the criminal penalties for intentionally and knowingly failing to disclose finance charges and the annual interest rate?
5. Discuss the federal garnishment law and its effect on debtors in the State of Ohio.

Two other important laws that you should be aware of are the Fair Credit Reporting Act (15 U.S.C.,1681 et seq.) and The Equal Credit Opportunity Act (15 U.S.C. ,1601 et seq.).

There were many abuses in real estate lending and that is one of the primary reasons for the Fair Credit Reporting Act, however, its provisions apply to all consumer credit. It applies in the case of an application of consumer credit or where an individual is being considered for employment. The law provides that where a person has been denied credit, he has the right to know the name and address of the Consumer Reporting Agency and the nature

and substance of the information in the file. The consumer is also provided with the opportunity to correct any erroneous information. The law provides what type of information on a consumer may be reported. There is civil liability for non-compliance.

Regulation B implements the Equal Credit Opportunity Act. It only applies to consumer credit. This is a very important regulation because in the past credit applications for such things as mortgage loans have been denied because a woman is single or is of child-bearing age. It is now illegal for a creditor to ask for information about birth-control practices and child-rearing philosophies. Further, a creditor cannot discriminate because of race, sex, age (provided the person is capable of entering into a contract) and regardless of whether the person's income is derived in part from public welfare. If credit is denied, the creditor must give the reasons. Remember, that in any case where you are applying for credit, you will have to prove that there was discrimination.

PART V. REAL ESTATE

I. THE REAL ESTATE PURCHASE.

What Is Real Estate? Real estate is land with everything permanently attached thereto. Real estate may be a vacant lot, a farm, a lot with a house upon it, and the like. Usually, when one thinks of real estate, he thinks of his home; this is correct if he thinks of the land along with the house. A house which is not permanently fixed to land is nothing more than personal property. A mobile home is personal property, land is real estate.

The Contract To Purchase Real Estate. The contract to purchase real estate is like every other contract, except it pertains to real estate. However, a contract to purchase real estate, unlike some other contracts, must always be in writing. A real estate contract must contain an offer, an acceptance, consideration (the purchase price), and the sale must be legal.

The offer. In the offer to purchase the specified piece of real estate, all of ther terms of the contract are embodied. Such as, how much the purchaser is willing to pay; exactly what the purchaser is buying; when the buyer is to get possession of the premises, and any other conditions that the offeror wants included in the contract. After the offer is made the seller of the real estate has the right to either accept or reject the offer. The seller cannot alter any of the terms of the offer, or just like in other contractual arrangements, he is considered to have made a counter-offer. If the seller has made a counter-offer, then it is up to the prospective purchaser to either accept or reject the counter-offer. Real estate contracts have the same basic format as other contracts.

Conditions Contained In An Offer To Purchase Real Estate.

Definition of a condition. A condition is contained in an offer, and it is a requirement that a certain event happen before a contract comes into being. When there is a condition in an offer, that condition must come to be before there is a contract. In the case of an offer to purchase real estate, there are many things that a purchaser may require to happen before the contract comes into being. Consider the following two common conditions:

a. Financing. One of the usual conditions contained in an offer to purchase real estate is that if the purchaser is going to borrow the money to pay for the house, the offer is conditional on the purchaser being able to borrow the money. If the purchaser is unable to borrow the money, then there is no real estate purchase contract. IF YOU ARE GOING TO BORROW MONEY TO PURCHASE REAL ESTATE, YOU SHOULD HAVE THIS CONDITION IN YOUR OFFER. Consider the following examples:

a-1. John Smith offers to buy Betsy Bill's home for $25,000.00, and as a part of the offer the condition that if he cannot borrow the money to pay for the house at 8% interest the deal is off, is included. Mr. Smith's credit is bad and he goes everywhere trying to borrow the money, but no one will lend it to him. In this case, because of the condition, a contract never came into being.

a-2. Suppose, in the above example that Mr. Smith did not include the condition in his offer and it is accepted by Mrs. Bill. If Mr. Smith cannot borrow the money and complete the contract, he could be subject to a breach of contract suit. In such a case, Mrs. Bill would be entitled to recover damages from Mr. Smith for breach of contract.

b. Marketable title. Another usual condition contained in an offer to purchase real estate is that the seller must be able to give a marketable title to the real estate. A marketable title means that there is no defects in the sellers title, and that no one else has any claim in the real estate but the seller. If the purchaser receives a defective title, he may have trouble when it comes time for him to resell it. THIS CONDITION SHOULD ALSO BE INCLUDED IN EVERY OFFER TO PURCHASE REAL ESTATE.

Minors And Real Estate Contracts. A minor cannot buy or sell real estate. You must be an adult to enter into a contract for the purchase and sale of real estate. The reason a person must be an adult to enter into a contract for the purchase and sale of real estate is that a minor has until he is eighteen years old to call the deal off and recover his money or property. Consider the following example:

John Brown, a minor seventeen years old, agrees to buy Betty Blue's home. Betty Blue is an adult. The necessary papers are signed, money paid, and title to Betty Blue's home is put in John Brown's name. Six months later, John Brown decides that he got a bad deal and he informs Betty Blue that he is calling the deal off, and he wants his money back. Mr. Brown can force Betty Blue to give him his money back minus an amount for rent upon giving her title to the real estate.

The Closing - What Is It? After the offer to purchase real estate is made and it is accepted by the seller, the deal must be closed, and this is known as the closing. At the closing the seller and purchaser meet and carry out the terms of the agreement. The purchaser pays the purchase price, and the seller in turn gives the purchaser the deed to the property.

Recording The Deed And Its Importance. The importance of having a deed recorded immediately cannot be stressed enough. The recording of a deed tells the world that you now own the property and that the seller no longer has an interest in the real estate. Only through the recording of the deed is there an official record that the title to the real estate is now in the purchaser's name.

What happens if a deed is not recorded? First, if the deed is not recorded, title to the real estate would officially remain in the seller. Second, if title remains in the seller, and anyone has a claim against the seller, that claim may become a claim against the real estate. However, if title to the real estate has been transfered from the seller to the purchaser, no claims against the seller can then be filed against the real estate.

Questions And Problems.

1. What is real estate?
2. What is a closing?
3. Why can't minors enter into contracts to purchase and sell real estate?
4. When you purchase real estate why is it important to have the deed recorded right away?
5. What are two conditions that should be made a part of an offer to purchase real estate, and why?

II. THE MORTGAGE.

What Is A Mortgage? A mortgage is a conveyance of property to insure the repayment of money borrowed, and upon the payment of the money, the conveyance becomes of no effect and is void. In the case of land, the land is actually transferred to the party lending the money with the condition that if the money is paid back according to the terms of the agreement, then the transfer will be considered as not having taken place.

Different Mortgages. For our purposes here, we will only consider the three main classes of mortgages:

1. The conventional mortgage. The so-called conventional mortgage is the mortgage which is obtained a a bank, a savings and loan association, or at any other private lending institution. Under a conventional mortgage agreement, the purchaser must pay a percentage of the purchase price at the closing, and the lending institution will loan the purchaser the balance at a specified rate of interest. In exchange for the loan, the purchaser conditionally transfers the real estate to the lender. Ther purchaser then repays the lender in monthly installment payments, which include both principal and interest. Once all of the payments have been made, the mortgage is cancelled and title to the real estate is then in the purchaser alone. Consider the following example:

Mr. Jones enters into a contract with Mrs. Smith to purchase Mrs. Smith's house for $20,000.00. Mr. Jones goes to XYZ Savings and Loan Association and applies for a loan. XYZ says to Mr. Jones, we will be happy to loan you the money, but you must pay twenty per cent down on the house. What this means is that Mr. Jones has to pay $4,000.00 towards the house out of his own pocket

in order to borrow $16,000.00. Further XYZ says to Mr. Jones, the interest charge will be 8% per annum and the loan has to be paid back in 240 equal installments.

The Federal Housing Administration Loan. The United States Government through the Federal Housing Administration loans money for the purchase of homes. Basically the F.H.A. loan is the same as the conventional loan. There are some differences, however, and the biggest difference is that the lending institution is the United States Government. Another difference between the conventional loan and the F.H.A. loan is that under the F.H.A. loan a very small amount of money is all that the purchaser is required to pay down in order to obtain the loan. Whereas under a conventional mortgage arrangement, a very large down payment may be required in order to obtain a loan. Under F.H.A. financing, on a $16,900.00 purchase price, the purchaser would only be required to pay approximately $700.00 down in order to obtain the loan. However, even the government requires a person to have reasonably good credit in order to obtain a loan. Another major difference between the conventional and F.H.A. loan is that an F.H.A. loan can usually be obtained for a longer period of years. If a loan can be obtained for a longer period of years it will reduce the monthly payment, but in the end a party will be paying much more in interest. In all other respects the F.H.A. loan and conventional loan are practically the same. There will be a specified interest rate, closing costs, and installment payments. Of course when you obtain a loan from the government, you do not have to worry about being taken advantage of as every one is treated the same.

The Veterans Administration Loan. If a person has ever served in the armed forces of the United States, he may be eligible for a loan to purchase a home from the United States Government. A Veteran's loan is one of the best loans available. Basically a veteran's loan is the same as an F.H.A. loan, except that with a V.A. loan the borrower will receive a lower interest rate and the closing costs will be much cheaper.

Foreclosure - The Failure To Make The Mortgage Payment. When a loan is obtained to purchase a home, a mortgage is taken on the home by the lender of the money. In return for lending the money for the home purchase, the lender expects to be paid back at a specified rate of interest by the borrower. If the home purchaser fails to pay back the money as agreed, there has been a breach of the mortgage agreement, and the mortgage holder may institute what is know as foreclosure proceedings against the real estate. A foreclosure proceeding is a lawsuit which asks a court to take someone's property away from them for failure to make their mortgage payments, and to sell it to satisfy the mortgage. Once the foreclosure proceeding has been filed, the court at a hearing determines how much is owed on the mortgage. After the mortgage balance has been determined, the court grants the mortgagor of the property a certain number of days to pay the balance of the mortgage. If the balance of the mortgage is not paid within the alotted time, the court then orders the property sold to satisfy the mortgage balance. At this point the Sheriff starts advertising the property for sale, and on a specified date, the Sheriff sells the property at public auction. It should be noted here that the property only has to be sold for two-thirds of its appraised value.

After the property has been sold at the Sheriff's sale, the proceeds of

the sale are applied to the mortgage balance. If the amount the property is sold for exceeds the mortgage balance and the court costs, the excess will be returned to the mortgagor or the former home owner. If the home is sold for less than the court costs and mortgage balance, the mortgagor or former owner has to pay the difference. (This is the same type of situation that you previously saw in the repossession and sale of personal goods.) If the mortgagor or former owner fails to pay the difference, the foreclosing party will be allowed a judgment for the difference between the Sheriff's sale and the amount owed on the mortgage against the mortgagor or former owner. Again, this type of judgment is known as a deficiency judgment. Once a deficiency judgment has been granted, the party in whose favor it is granted is free to collect it in any legal manner. The judgment creditor will be allowed to harrass the mortgagor, garnishee his wages, and use every other legal method for collecting a debt.

How many mortgage payments have to be missed in order for foreclosure proceedings to be instituted? ONE. A mortgage is a form of contract, and by its terms, if a mortgage payment is not paid when due, the contract is breached. Even if only one payment is missed, foreclosure proceedings may be instituted at the option of the lender. Usually this is not the case, but it could be. The statement that I am only three payments behind, or I am only two payments behind, has no bearing on whether or not the mortgagee can institute forclosure proceedings. Once the first payment has been missed, the mortgage agreement has been breached, and legally speaking, this is what is important.

Questions And Problems.

1. What is a mortgage?

2. Name three different types of mortgages?

3. What is a foreclosure proceeding?

4. How many mortgage payments have to be missed in order for the lender to be legally allowed to institute foreclosure proceedings?

III. THE LAND INSTALLMENT CONTRACT.

What Is A Land Installment Contract? Real property may be purchased without the execution of a mortgage. Real property may be purchased through what is known as a land installment contract. A land installment contract is an agreement for the purchase and sale of real estate between two or more parties which cannot be performed within one year. Under the terms of a land installment contract, the buyer is to pay the seller the purchase price in installments at a specified rate of interest; the seller, however, retains title to the real estate to insure payment of all of the installments. Upon the payment of all of the installments, the seller is required to convey the title to the real estate sold to the purchaser.

The Land Installment Contract In Ohio. (O.R.C. , 5313.01 et seq.)

In Ohio every land installment contract must:

1. Be executed in duplicate and a copy be provided to the buyer and seller
2. Contain the full names and addresses of all parties to the contract
3. Contain the date when signed by each party
4. Contain the legal description of the property sold
5. Contain a statement of the charges or fees for services which are separate from the contract price
6. Contain the amount of the down payment
7. Contain the principal amount owed after the down payment is subtracted from the price and additional charges
8. Contain the contract price
9. Contain the amount of and the date each installment is due

10. Contain the interest rate and how the interest is computed
11. Contain a statement of anyone else's interest in the land, such as liens, mortgages, easements, and the like
12. Contain a statement requiring the seller to deliver a deed upon the payment of the total contract price
13. Contain a provision that the seller has to provide evidence of ownership
14. Contain a provision that if there is a mortgage on the property and the seller does not pay it, the buyer can make the mortgage payment and receive credit on the land contract
15. Contain a provision that the buyer is responsible for the payment of taxes, assessment, and other charges against the real estate from the date of the contract unless it is otherwise agreed
16. Contain a statement of any pending orders of any public agency against the property
17. CONTAIN A PROVISION THAT THE SELLER MUST RECORD A COPY OF THE CONTRACT WITH THE COUNTY RECORDER WITHIN TWENTY DAYS AFTER THE SIGNING OF THE CONTRACT.

In addition to the foregoing requirements, a seller cannot now place a mortgage upon the property sold in an amount greater than what is due under the land contract. This provision was designed to protect the purchaser in case the seller would default on a mortgage involving the real estate in the land contract. If the seller should default, the purchaser in the land contract could take over the mortgage in place of the land installment contract, receive credit for the payments under the land contract, keep the mortgage

people from foreclosing, pay for the property, and eventually receive a clear title to the property.

Also, a land contract must now be executed with the same formalities of a deed. Which means, there must be two witnesses to the signing of the contract, and the signatures must be notarized.

Further, a purchaser now has the right to demand from the seller twice a year a statement showing the following:

a. The amount credited to principal and interest,

b. The balance due.

If a contract passbook is furnished by the seller, then the buyer cannot demand either of the two above items from the seller.

The above requirements have only been required by law since November 11, 1969, in Ohio. Prior to the aforementioned date, the above provisions were not required to be in a land contract, and a land contract was not even required to be recorded.

Breach Of The Land Installment Contract In Ohio. Under the new law which was enacted in November of 1969, the remedies for the breach of a land installment contract underwent a drastic overhaul. Under prior law it was almost automatic that the seller got back his property with very little trouble, but since the new law has gone into effect the breach of a land installment contract has been brought under the close supervision of the courts. Consider the following new laws:

a. Breach by the seller in Ohio. If the seller violates or refuses to perform any of the terms of the land installment contract, the buyer can go to court and have the contract enforced.

b. Breach by the buyer in Ohio. Under the new law enacted in Ohio, if the buyer defaults in his payments as required by the land installment contract, the buyer has 30 days in which to pay all amounts then due and avoid a forfeiture of his interest. The 30 days gives the buyer a favored position, because in most other contractual arrangements, the contract would be at an end upon the first breach. However, under the new land installment contract law, 30 days must elapse without payment before the seller can attempt to recover the property or have it sold under a judicial sale.

In addition to the 30 day time limitation, the seller must also do the following before he can proceed to recover his real estate or have it sold by a judicial sale:

a. Give written notice to the buyer after the 30 days have elapsed, and the notice must contain,

1. a description of the contract and the property
2. a description of the breach of the contract
3. a statement to the buyer that he has 10 days in which to live up to the terms of the contract or leave the premises.

b. The aforedescribed notice must either be given to the buyer personally, left at his usual place of residence, or it must be sent to him by certified or registered mail.

After the two foregoing requirements are met, the seller is then free to proceed against the property. If the land installment contract has been in effect five years or less and if 20% of the purchase price has not been paid when the buyer defaults, the seller may ask the courts to restore the property to him. In this type of situation the property is restored to the seller just

as if it had never been sold. If the land installment contract has been in effect five years or if 20% of the purchase price has been paid, the seller must bring a foreclosure proceeding in the court of common pleas in order to recover for the breach of the land installment contract. This keeps the seller from automatically getting the property back, and brings the breach of contract under the supervision of the court.

The Deficiency Judgment And The Land Installment Contract In Ohio.

With the enactment of the new law in Ohio, the deficiency judgment has been practically eliminated in the area of land contracts. If the seller elects to void the contract under either of the foregoing methods upon a breach by the buyer, the seller can recover in addition only the following:

1. the fair rental value less the amount paid on the contract for the time that the buyer occupied the premises, and
2. an amount for deterioration or destruction of the property caused by the buyer's use.

Under the new law the seller will not be able to recover the difference between the contract price and the unpaid installments.

Prior Law. All of the foregoing has dealt with the new law which went into effect on November 11, 1969. The new law has tended to close some of the loop-holes which earlier favored the seller. Under prior law the land installment contract did not even have to be recorded so that no one would know that the real estate had been sold. Other people could obtain an interest in the land without the buyer's knowledge or consent. The buyer under prior law was pretty much at the mercy of the seller. If the buyer did not live strictly within the terms of the contract, he would find himself out in the street with

his belongings wondering what happened. Under prior law the seller would take the property away from the buyer at the slighest breach, and sometimes it was questionable whether or not a breach had occurred. One of the greatest risks under prior law was that the seller would mortgage the property after the sale and then not pay the mortgage. In such a case the buyer would suddenly find out that his property had been foreclosed on. In this case also, the buyer would soon find himself out on the street without knowing why.

The new law has helped to correct some of the injustices, but it is not perfect.

Pitfalls In The Land Installment Contract. Even though the new law has corrected some of the defects in land installment contracts, there are still problems the buyer should be aware of when entering the contract. One of the biggest concerns of the buyer is whether or not there are any existing mortgages on the property being purchased. If there is a mortgage on the property, the buyer will want to know how much it is and how it is going to be paid. If there is an existing mortgage on the property being purchased, the buyer should insist on a provision being inserted into the contract providing for the payment of the mortgage. If there is or is not a mortgage on the property being purchased, a provision should be put into the contract prohibiting the seller from further mortgaging the property after the sale. By inserting these provisions into the contract, the buyer does not have to worry about some unknow party foreclosing on the property that he has purchased.

In addition to the foregoing, there should be a provision included in the contract forbidding the seller from allowing anyone else to obtain an interest in the property because of some action of the seller.

In order to insure that these provisions would be complied with, a penalty provision should also be inserted into the contract. The penalty provision could provide that the contract would be decreased by a certain amount for each violation. BEWARE: THE FOREGOING PROVISIONS ARE ONLY SUGGESTIONS AND ARE NOT THE LAW IN THE STATE OF OHIO. HOWEVER, THERE IS NO LAW WHICH STATES THAT THEY CANNOT BE INSERTED INTO A CONTRACT.

Questions And Problems.

1. What is a land contract?
2. What is the main difference between a land contract arrangement and a conventional mortgage arrangement?
3. Is it necessary to have a land contract recorded in Ohio?
4. Why is it important to have a land installment contract recorded?
5. What are the pitfalls in a land contract arrangement?

IV. MISCELLANEOUS MATTERS PERTAINING TO REAL ESTATE.

Different Types Of Deeds. Generally there are two different types of deeds given in the sale of real estate, and they are:

1. General warranty deed. When purchasing real estate, a buyer should always insist upon the seller giving a deed of general warranty to the real estate being purchased. Through a warranty deed, the seller is guaranteeing that there is nothing wrong with the title to the real estate, and that no one else has an interest in the real estate being sold. Further, the seller is saying he will defend against all lawsuits of anyone trying to claim an interest in the real estate being sold. When a seller gives a general warranty deed, he is guaranteeing that he owns all the real estate he is conveying to the purchaser,

2. The quitclaim deed. When a quitclaim deed is given, the seller is saying he is giving all the title that he has in the real estate, and if anyone else has an interest in the real estate, he will not defend against a lawsuit brought by that party who is asserting their claim. Further, the seller is saying that it is possible that someone else might have a claim in the real estate, but he does not know it to be true. A person should never accept a quitclaim to real estate, unless an attorney has examined the matter and says that it would be all right to accept a quitclaim deed. There are certain situation where only a quitclaim deed can be given.

The Title Search. Before buying real estate, the buyer should have a title search done. A title search is a search of past records to insure that the seller has title, or owns the property he is selling. Further, the title search will reveal whether or not there are any unpaid taxes on the property, whether there are any liens on the property, whether there are any governmental

agency orders against the property, and anything else which would affect the property.

The purpose of the title search is to insure the buyer that he is receiving a marketable title to the real estate. One certainly would not want to buy a piece of real estate and then be unable to resell it because of an unmarketable title. A marketable title is one that says the current owner of the real estate owns all of the real estate and no one else has a claim to the real estate. Considering the foregoing, one can readily see the importance of the title search.

Title Insurance. If there is ever any question when one is buying real estate as to the title he is receiving, he should buy title insurance. Title insurance protects the buyer against any claim that someone else might have in the real estate being purchased. Title insurance should be taken out whenever there is any question as to the status of the title the buyer is receiving.

The Homeowner's Insurance Policy - Protecting Your Investment. Upon purchasing a home, the buyer should immediately purchase what is known as a homeowner's insurance policy. The homeowner's insurance policy protects the homeowner's investment from destruction and at the same time protects him if someone should be hurt on his property. Most homeowner's policies cover everything from fire damage to dog bites. Every homeowner should have a homeowner's insurance policy for his own protection.

Section 235 Of The National Housing Act. What is it? Section 235 of the National Housing Act is a law enacted by the federal government which provides assistance for low income and moderate income familites in the way of a partial payment of the monthly mortgage payment. In effect, Section 235 can

help a family buy a home who could not otherwise afford it. If the mortgage payment is greater than 20% of a person's adjusted income, the federal government will provide money assistance. Further, in order to qualify for assistance, the mortgage cannot exceed $21,000.00, and there are certain income limitations which are based on the family's size. Under Section 235 the mortgage must be an F.H.A. loan.

How do you apply for assistance under Section 235? Any company that is authorized to handle F.H.A. mortgages can make a Section 235 application.

Questions And Problems.

1. What are the two main types of deeds to real estate?
2. Which type of deed should a person obtain when he purchases real estate?
3. Discuss why a title search is important to a purchaser of real estate.
4. What is title insurance and what type of protection does it provide?
5. Discuss what a homeowner's insurance policy is and its importance.
6. What is Section 235?

PART VI. INSURANCE - ANOTHER FORM OF CONTRACT

I. ELEMENTS OF THE CONTRACT.

Nature Of The Contract. An insuring agreement if another form of contract. Our lives are full of risks, and an insuring agreement covers part of those risks. Through an insurance contract an insurer is paid money by an individual to assume his or her risk against a particular loss, and if the party who has an insured risk suffers a loss, the insurer then must reimburse the party for the loss by paying the party a specified amount of money to replace the loss.

Some Important Terms Defined. There are some terms that are common to all insurance policies, and these terms must be known to understand insurance agreements. Consider the following terms:

1. The Policy. The insurance policy is the written agreement between the insured and the insurer which sets forth the risks covered in case of loss and how much will be paid for each loss.

2. Premiums. The premiums is how much it costs the insured for the insurer to assume the specified risk.

3. The Insured. The insured is the party who has a risk and has contracted with another to assume the risk for the payment of premiums.

4. The Insurer. The insurer is the party or company assuming a specified risk in return for the payment of premiums.

5. The Risk. The risk is the thing insured against, such as, fire, theft, hail, death, disability, and the like.

6. Subject Matter. The subject matter of an insuring agreement is the thing insured.

7. The Beneficiary. The beneficiary is the party who receives the benefits of an insuring agreement in the case of loss.

8. The insurable interest. In order for a person to be able to insure some thing, he or she must have some interest in it, such as, owning the thing, or having a financial interest in it, or his own life or his family lives. You cannot insure something which if lost would cause you no loss.

9. Cash surrender value. Some insurance policies build up a cash value as the insured pays his premiums, and this cash value can be obtained upon the cancellation of the policy. This value is known as the cash surrender value, and is usually found only in life insurance policies.

The Application For Insurance. The application for insurance is the offer of the prospective insured to enter into a contract for the coverage of a specified risk. The application is of utmost importance as it is suppose to contain the information about the risk being insured. An insurance company will not assume a greater risk than what it has knowledge of, and if an application is falsely made, or incorrect information is given, the insuring agreement is invalid and the insurance company will not pay for any loss suppose to be covered by the agreement.

Delivery Of The Policy. Receiving a copy of the insuring agreement is of the utmost importance to the insured because only after receiving a copy of the policy can the insured be sure that his application has been accepted. Another important reason for the insured to obtain a copy of the policy is to make sure that it contains all of terms that was agreed upon. Further if a dispute should arise as to coverage the insured has the agreement to which he can refer.

Payment Of The Premiums. Usually the application for insurance must be accompanied by the first premium. (If the company refuses to accept the application the premium is returned to the applicant.) After the company has accepted the application for insurance and issued the policy of insurance, the premiums have to be paid by the insured in the amounts and on the dates as stated in the policy. Failure to pay the premiums as required by the terms of the agreement is a breach of the contract and may end the insuring agreement if the insurer so choses.

Notice And Proof Of Loss. Most insurance policies require the insured to notify the insurer in writing of a loss within a certain number of days of the loss. If the insurer is not notified within the time specified in the policy, the insurer may not have to pay for the loss under the terms of the agreement.

In addition to notification of loss, an insured must be able to prove that he suffered a loss covered by the insuring agreement. In most cases proof of loss is quite easy, such as in the case of fire, or in the case of an automobile accident, as the insured has the remains to show the insurer. However, in the case of a theft, it may be much more difficult for the insured to prove loss. The reason being, the insured must first show that he owned the item stolen, and second, the insured may have to show how the item was stolen and when. Sometimes, this is not easy to do. You, yourself probably know of many more examples where it would be difficult to prove a loss.

Lapse And Termination Of The Insuring Agreement.

Termination by the insured. Under the normal insuring agreement, the insured may terminate the insuring agreement at any time by so notifying the insurer. Another method of terminating the agreement by the insured is to stop making the premium payments. This method is not a good method, as every one should

be aware of the intentions of the insured. There is too much uncertainty in this method.

Termination by the insurer. The insurer may also terminate the insurance contract, but it may not be at any time unless the policy so provides. The written agreement will state under what condition the insurer has the right to terminate the insuring agreement.

Formal notice of cancellation. The law in Ohio now requires the insurer to send written notice of the termination of an insuring agreement and the reason or reasons for the termination. If the insurer fails to send the required notice the insurance coverage is not terminated.

II. DIFFERENT TYPES OF INSURANCE.

Life Insurance. Life insurance is protection against the risk of sudden or early death. If everyone lived to be seventy-five or eighty years old, there would be no need for life insurance as the insured's children would be grown and able to take care of themselves, and the insured should have amassed enough wealth to take care of his or her spouse for their remaining days. Life insurance pays a specified amount of money to a named beneficiary on the death of the insured. Thus, when a young man has a wife and family, he can insure that they will be taken care of if he were to suddenly depart this world, through life insurance.

There are many different types of life insurance policies with many different variations, but the following are the basic types of life insurance contracts:

1. Term insurance. The term life insurance policy is taken out for only a specified period of time. After the specified time has elapsed,

unless the insured dies during the period, the insurance terminates. Under this type of insuring agreement, the amount payable upon the death of the insured may decrease each year until the policy of insurance terminates, or the insured dies.

2. Ordinary life insurance. Under the terms of the ordinary life policy, the insured pays into the life insurance for as long as he lives, and upon the insured's death, a specified sum is paid to the beneficiary named by the insured in the insurance policy. Under ordinary life insurance, after a specified period of time it begins to build up a cash value, but of course, the cash surrender value is always much less than what has been paid into the policy.

3. Limited payment insurance. Under the limited payment insurance arrangement, the insured pays into the policy for a specified number of years, usually ten, twenty, or thirty years, and at that point the insured has a paid up insured policy which will pay his named beneficiary a specified amount if he dies. Sometimes under this arrangement, if the insured lives to a certain age, he or she can receive the proceeds of the policy under a periodic payment arrangement. This type of insuring arrangement always has a cash surrender value.

4. Endowment insurance. Under the endowment insuring arrangement, the insured pays into the policy for a specified length of time, and then the policy becomes payable at a future date to the insured or his beneficiary. The endowment policy is often used as an investment, and is not really designed for the average individual.

5. Annuity insurance. Under the usual annuity arrangement the insured pays into the policy for a specified period of time, and at a future date the insurance company will periodically pay the insured a specified sum of money. There are many variations of the annuity insuring arrangement, and it also is not usually for the average individual.

Automobile Insurance. Liability coverage in an automobile insurance contract protects the insured while he or she is driving his or her automobile if the insured should damage someone else's property or injure someone while operating his or her automobile. Liability coverage is designed to protect the insured in case he injures someone or damages someone's property while operating his or her automobile. Liability coverage keeps the insured from paying from his or her own pocket for damages done while driving his or her automobile which was the insured's fault.

The amount of damage the insured will be protected against by the insurer is limited by the amount stated in the insurance policy. For example, the insurance policy may state that the insurer will be responsible for $10,000.00 damages per accident. If the insured has such a limitation in his policy, any damages over $10,000.00 in any single accident will be the responsibility of the insured and the insured will have to pay for such excess.

Full Coverage. Full coverage under an automobile insuring agreement means that not only is the other driver covered by insurance, but so is the insured and his automobile. Of course, the amount the insurance company will pay each is limited by the provisions of the policy.

Uninsured Motorists Coverage. The uninsured motorists coverage is optional for every insured, but everyone should have it written into their insuring agreement as it is very inexpensive. The uninsured motorists coverage protects the insured from loss because of being injured by another driver who does not have insurance. If an insured has the uninsured motorists provision in his policy and is involved in an accident which is the other driver's fault, the insured's insurer will pay the insured for the loss. Here also, the amount the insurer will pay the insured is limited by the terms of the policy.

Real Property Insurance. Real property with buildings attached is usually a very valuable investment, with the buildings usually making up most of the investment. Insurance can and should be obtained to guard against their loss. Insurance may be obtained to guard against such things as fire, wind, hail, water, and the like.

Personal Property Insurance. Anything of value may be insured against loss. A party's household goods, such as furniture, may be insured against loss. Even rings, watches, coins, furs, and other personal items may be insured. The cost for this type of insurance is usually very little. Anyone living in an apartment should always have the contents of his or her apartment insured, as a neighbor may accidentally burn the apartment building down.

The Homeowner's Insurance. The homeowner's insurance coverage is just what its name indicates - insurance coverage for the homeowner. Homeowner's insurance is a blanket type of coverage which protects the homeowner from the risk of loss and liability. The homeowner's insurance coverage can cover anything from the home burning down to the family dog bitting the neighbor.

No homeowner should be without this blanket protection, because if someone is injured on the homeowner's property, that person will try to hold the homeowner liable.

Health And Accident Insurance. Health and accident insurance provides protection against a serious illness or accident. Usually the health or accident insurance will not cover a sickness unless the insured is treated at or enters a hospital. There are a few insuring agreements which will pay a part of a doctor's bill for treatment outside of a hospital, but usually the amount the insurer will pay is very small.

Today, with the exorbitant doctor, hospital, and medical fees, which are not getting any cheaper, if a family does not have medical insurance, one major illness in the family could bankrupt the family. The fees charged today for medical service require every family to have health and accident insurance. Of course, just as in the case of automobile insurance, the health insurers limit the amount they will pay for any one particular illness or injury. Thus, in some cases, the medical expenses may exceed what the insurer has agreed to pay, and the insured will have to pay the difference out of his own pocket.

Major Medical Insurance. There is a form of insurance known as major medical insurance which will pay for medical bills above a certain amount, such as five thousand dollars. Major medical insurance is a protection against serious illness. Major medical insurance will pay for medical expenses over and above what the normal health and accident insurance covers.

Disability Insurance. Insurance can be obtained against the risk of being unable to work because of an injury or illness. This form of insurance is

known as disability insurance. Under the provisions of disability insurance, the insuring company will pay the insured a specified amount for a certain period of time because of an illness or injury which keeps the insured from working. This type of insurance guarantees the family an income during periods of illness or injury by the bread winner.

Summary. Insurance can be obtained to cover any type of risk, and anything of value can be insured against loss. Even parts of the human body may be insured such as hands, fingers, legs, and eyes. Every family unit should have the appropriate amount of insurance to protect against illness, injury, liability, and loss

Questions And Problems.

1. Who is the insured?
2. What is an insuring agreement?
3. Discuss the application for insurance and its importance.
4. Discuss the importance of receiving a copy of the insurance policy.
5. Must the insurer be notified of a loss cover by an insurance contract, and how soon must it be done if it is necessary to notify the insurer?
6. Discuss the methods an insuring agreement may be terminated.
7. Name five different types of insurance.

PART VII THE LANDLORD AND THE TENANT

I. NATURE OF THE RELATIONSHIP.

Another Form Of Contract. The rental of property is another form of contractual arrangement. It does not matter whether the premises are rented for a week, a month, or a year, it is still a form of contract which is more commonly known as a lease. The lease may be oral or it may be written, but if the rental period is for a year or longer, the law in Ohio requires it to be in writing. If all leases were in writing, there would be far fewer disputes between landlords and tenants, as their rights and duties would be expressly set forth in the agreement.

The Weekly Rental. Premises may be rented by the week if the landlord is agreeable to this type of arrangement. An advantage of the weekly rental is that upon very short notice the tenant can move. Conversely of course, the landlord can make the tenant move on very short notice. As a matter of fact, the landlord can give a tenant notice to move on the last day of the week and the tenant is suppose to be out the next day. However, if the occupancy goes over into a new week without either the landlord or tenant terminating the arrangement, the law implies that a new weekly arrangement has been entered into by the parties, and it will continue through the balance of the new week.

The Monthly Rental. Premises may be rented by the month if the landlord is agreeable to this type of arrangement. Under the monthly rental arrangement, the rental arrangement continues for a month, and it may be terminated at any time before the month period is up by either the landlord or tenant. As in the weekly rental arrangement, either of the parties can terminate the rental agreement on the last day of the month. However, if the occupancy goes over into a new month without being terminated, the law implies that a new monthly

arrangement has been entered into by the parties, and it will continue through the balance of the month.

The Yearly Lease. The most common agreement for housing rental is the year's lease. Under the normal one year lease, the tenant agrees to live in the leased premises for one year and to pay rent in installments, and the landlord agrees to rent to the tenant for the year's period so long as the tenant does not violate any of the terms of the lease. The tenant cannot move out of the leased premises before the year's period is up or it will be a breach of the lease agreement. The landlord cannot make the tenant move either unless the tenant has violated some provision of the lease such as non-payment of rent.

If the tenant does move out before the year has expired and does not pay the rent for the balance of the year, the landlord may sue the tenant for the loss of rent. By the same token, if the tenant has not breached his lease agreement with the landlord, the landlord cannot make the tenant move.

After the year's lease has terminated and if a new agreement is not entered into, the law will imply a new agreement if the landlord and tenant continue on the same rental basis as they were under the lease. For example, if the tenant was paying his rent monthly under the lease agreement, and he continues to do so after the expiration of the lease and the landlord accepts the arrangement, the law will imply that they have entered into a month to month rental arrangement.

Breach Of The Rental Agreement. An oral or written lease is a binding agreement the same as any other contract. A violation of the lease agreement by either party is the same as a breach of contract. Upon the breach of the lease agreement, the party wronged may file a lawsuit for the appropriate relief.

A Home Is A Man's Castle. Most everyone has heard the foregoing phrase, and it still has meaning today. Even when a person lives in rental property, he or she has the right to live in that property with no outside interference. Unless it is otherwise agreed a tenant does not have to allow the landlord on the premises rented by the tenant. Unless it is otherwise agreed, a tenant has complete control over the premises rented. This does not mean, however, that the tenant has the right to destroy the premises or materially alter them. What it does mean is that the tenant has the right to live in the rented premises without interference from the landlord.

Duties And Liabilities Of A Landlord As To The Condition Of Rental Property. (O.R.C. ,5321 et seq.)

A landlord who is a party to a rental agreement shall:

1. Comply with the requirements of all applicable building, housing, health, and safety codes which materially affect health and safety;

2. Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas of the premises in a safe and sanitary condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating and air conditioning fixtures and appliances, and elevators, supplies or required to be supplied by him;

5. Where there are four or more dwelling units, provide appropriate places for the removal of ashes, garbage, rubbish, etc. and arrange for their removal;

6. Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where installation is under complete control of tenant;

7. Not abuse the right of access (See below).

8. Except in case of emergency, give the tenant reasonable notice of his intent to enter and enter only at reasonable times.

If the landlord makes an entry in violation of the above, the tenant may recover actual damages.

Duties And Liabilities Of A Tenant As To The Rented Premises.

A tenant who is a party ot a rental agreement shall:

1. Keep that part of the premeises that he occupies and uses safe and sanitary;

2. Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

3. Keep all plumbing fixtures in the dwelling unit or those used by tenant as clean as their condition permits;

4. Use and operate all electrical and plumbing fixtures properly;

5. Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;

6. Personally refrain and forbid any other person who is on the premises with his permission, from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

7. Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;

8. Conduct himself and require other such persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors'

peaceful enjoyment of the premises.

The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, deliver packages, show dwelling unit to prospective purchasers or tenants.

If the tenant violates any of the above provisions, the landlord may recover any actual damages.

In addition to the above listed obligations of both landlords and tenants, the Ohio Landlord-Tenant Act specifies procedures that are to be followed in an effort to remedy certain conditions, security deposit procedures, restrictions on the landlord's ability to terminate utilities or services, exclude the tenant from the premises, threaten any unlawful act. A tenant's furnishings and possessions may only be seized in accordance with an order issued by a court.

The Better Housing League handles tenant/landlord problems and problems with buying a house. Their phone number is 721-6855.

The Federal Housing Agency (Discrimination Division) handles complaints about housing discrimination based on race, religion and national origin. Their phone number is 800/424-8590.

II. FORCIBLE ENTRY AND DETAINER. (O.R.C. ,1923 et seq.)

What Is It? The forcible entry and detainer action is a speedy legal method for the recovery of real estate from a renter. A forcible entry and detainer action provides an owner a method for getting a renter out of his premises.

Grounds For Filing A Forcible Entry And Detainer Action. A forcible entry and detainer action may be filed against a tenant for the various reasons including the following:

1. When there is a specified term that the tenant can occupy the premises and he stays longer than the specified term.
2. Under an oral rent agreement where the renter is in default in the payment of the rent and the landlord has notified the renter to leave the premises.
3. When the real estate is sold.
4. When a court orders property sold to satisfy a debt.

The most common ground for a forcible entry and detainer action is, of course, the failure to pay rent. The failure to pay rent will usually be followed by a notice from the landlord to move. The following is an example of a forcible entry and detainer petition:

PETTITION IN FORCIBLE ENTRY AND DETAINER

THE STATE OF OHIO : SS. HAMILTON COUNTY MUNICIPAL COURT
COUNTY OF HAMILTON

_____:
Plaintiff
_____:
_____:
-vs- :
: No._____
_____:
_____:
Defendant
_____:

STATEMENT OF CLAIM

Plaintiff's claim is that the said defendant___has___every since the_____day of_____A.D. 19___unlawfully and forcibly detained, and do still unlawfully and forcibly detain from plaintiff, possession of the following described premises, situated in County of Hamilton, State of Ohio, and known as:

_____

_____

_____

together with the Lot of Land on which said premises are situated. The said defendant___entered upon said premises as tenant___of plaintiff, the lease hereof expired at the time therein first mentioned, and from that time said defendant___has___unlawfully and forcibly held over said term. On the___day of____A.D. 19___plaintiff duly served upon the said defendant___as required by law, notice in writing to leave said premises.

Grounds:_____

_____

Rent: $_____per month. Amount now due $____for the period beginning_____ _____and ending_____. Plaintiff asks process and restitution.

_____
ATTORNEY FOR PLAINTIFF

Three Days Notice. Before a forcible entry and detainer petition can be filed by a landlord against a tenant, the landlord must first give the tenant three days noti-e that the tenant is to vacate the premises. The notice may be either handed to the tenant or left at the tenants residence in a conspicious place. Failure to give the three day notice or failure to give it in writing renders the forcible entry and detainer action invalid. Consider the following examples:

1. George Black rents his house to John Burns, and after three months Mr. Burns fails to pay his rent. Mr. Black serves a written three day notice upon Mr. Burns by handing him the notice which requests him to move. After the three days have passed Mr. Burns is still in Mr. Black's house and refuses to move. Thereupon Mr. Black files a forcible entry and detainer action against Mr. Burns. The three day notice is valid, and the forcible entry and detainer petition is valid.
2. Suppose in illustration number 1 that Mr. Black did not serve the required three day notice at all, or make any type of written request upon Mr. Burns to move. If such was the case, the forcible entry and detainer petition would be invalid, and the court would not make Mr. Burns move.
3. Suppose in illustration number 1 that Mr. Black becomes confused for some reason and leaves the three day notice at the house next door to Mr. Burns. Mr. Black thereupon files a forcible entry and detainer petition against Mr. Burns. The three day notice is invalid as Mr. Burns never got it, and the forcible entry and detainer petition is invalid as the three day notice was not served as required by law.

Court Procedure Upon The Filing Of The Forcible Entry And Detainer Petition. After the forcible entry and detainer petition is filed with the proper court, a copy of the petition is served on the tenant along with a summons to court. Upon the date stated in the summons, the court will hold a hearing as to whether or not the landlord is entitled to have his premises vacated. If the court determines the landlord is entitled to regain possession of the premises, it will order the tenant to move and it will give the tenant a specified number of days in which to make the move.

Failure To Move Within The Number Of Days Given By The Court. Failure of a tenant to move within the number of days specified by the court will result in the tenant's possessions being set out on the sidewalk. After a court has ordered a tenant to vacate a premise, it can enforce that order by having the tenant's possessions set out on the sidewalk. The best course to follow after a court order to move is to move voluntarily, so that the contents of the premises can be moved carefully and not be damaged.

Payment Of Rent. A tenant is required to pay rent for every day he or she occupies a rented premise. The law requires a tenant to pay rent for each day he lives in a rented premise. Therefore, up to the day a tenant moves out of rented premises, rent must be paid.

When a landlord files a forcible entry and detainer petition, if there is rent due, he may at the same time sue for the rent that is due and for rent up to the date of the court hearing. If the court finds the landlord is entitled to the rent he is asking, it will grant the landlord a judgment for that amount.

III. THE LANDLORD'S LIEN IN OHIO.

The only way a landlord can obtain a claim or seize a tenant's property in Ohio for nonpayment of rent is by express agreement. If it is agreed between the landlord and tenant that if the tenant fails to pay his rent the landlord can take the tenant's possessions, then and only then can the landlord seize a tenant's possessions. If there is no agreement in this respect between the landlord and tenant, the landlord has no right to seize a tenant's possessions in exchange for rent. Often one hears stories about a landlord padlocking a tenant's apartment so that the tenant cannot get his possessions, but unless there is an agreement which permits the landlord to take a tenant's property in exchange for rent, the seizure would be illegal. If there has been an illegal seizure, the tenant may not only recover his or her property but the landlord may be sued for any damage that was done to the tenant or his property by the seizure.

Questions And Problems.

1. What type of relationship is the landlord - tenant relationship?
2. Discuss the various different rental arrangements.
3. When does the weekly contract terminate?
4. When does a rental agreement have to be in writing? Should all rental agreements be in writing, and if so why?
5. May a rental agreement be breached by both parties? Discuss the various ways a rental agreement may be breached.
6. What is meant by the phrase used herein, "A Home Is A Man's Castle"?
7. What are the duties and liabilities of a landlord as to the condition of rental property?

8. What are the duties and liabilities of a tenant as to rented property?
9. What is a forcible entry and detainer petition?
10. Discuss the various grounds for filing a forcible entry and detainer petition.
11. What is the three day notice?
12. Discuss the court procedure after a forcible entry and detainer has been filed?
13. What will happen if the tenant does not move within the time alotted by the court?
14. How may a landlord legally seize a tenant's property for nonpayment of rent?

COMMON LAW MARRIAGE

A common-law marriage is a simple agreement followed by cohabitation between one man and one woman who may lawfully so contract, that they will take one another as husband and wife, sustain this relation so long as they both shall live, with the mutual understanding that neither one nor both can rescind the contract or destroy the relation.

About thirty-six states have abolished common-law marriages and only recognize ceremonial marriages. Thus, there are still fourteen states that recognize common-law marriages. Common law marriages are valid in Ohio and will be given legal effect when properly established.

The elements essential to the establishment of a common-law marriage have become well established by court decision. They are the following:

1) A mutual agreement to marry in praesenti;
2) Made by parties competent to marry;
3) Followed by co-habitation (sexual intercourse) as man and wife;
4) A holding out of themselves as husband and wife in the community in which they live; and
5) Being regarded as husband and wife in the community in which they live.

The establishment of a common-law marriage can be very important with respect to inheriting property, insurance benefits, Social Security disputes and bigamy prosecutions.

The agreement to marry must be made in praesenti. That means there must be a present agreement to marry. An agreement to marry at some time in the future is not sufficient.

In attempting to prove the existence of a common-law marriage there must be clear and convincing evidence of all of the above elements. The following can be used:

Direct evidence: 1) Letters or other writings;

2) Witnesses to the agreement.

Indirect evidence: 1) Joint income tax returns;

2) Joint checking accounts;

3) Leases or deeds;

4) Social Security records;

5) Credit applications or records.

Some of the advantages of common-law marriage include the fact that it's cheaper, in some sub-cultures it is considered the normal thing to do and it is an easy hassle-free way of legitimizing a relationship. There are, however, some disadvantages. For instance, there is a risk of false pretenses of marriage, in some cases the validity is questionable. Further, there may be some confusion created in respect to inheritance rights and finally, it weakens public esteem for the sanctity of the marital relation.

A common-law marriage continues for the joint lives of the parties and can be dissolved only by law or the death of one of the parties. The contracting parties are husband and wife as fully and to the same extent as if there had been statutory and ceremonial marriage.

Remember, you have to get a common law marriage legally dissolved.

Questions

1. Is common-law marriage valid in Ohio?
2. Name the elements of a valid common-law marriage.
3. Why is it important to establish the validity of a common-law marriage?
4. Name some advantages of common-law marriage.
5. Name some disadvantages of common-law marriage.
6. How can a common-law marriage be dissolved?

I. HUSBAND AND WIFE.

A Husband's Responsibilities. A husband's responsibilities in Ohio are many and varied. Upon entering into the marriage contract, both the husband and wife agree to give the other respect, fidelity, and support. In Ohio a husband is charged by law with providing a home and support for his wife and family. Further, a husband must provide clothing, medicine, and any other necessities of life, and at the same time he is also charged with providing guidance and stability to the family unit.

As a matter of law in Ohio, the husband is designated as the head of the family unit. The husband may choose any reasonable place or mode of living, and the wife must conform thereto. Failure of the wife to so conform, relieves the husband of any further obligation to provide a home, food, or necessities for the wife.

A Wife's Responsibilities. Under the law in Ohio, a wife is charged with the duty of taking care of the home and children if any. If a husband is unable or incapable of supporting the family unit alone, then the wife is required to give such assistance as she is capable. The wife's role in Ohio is one of helping her husband in any manner that will make life more enjoyable for both.

II. MUTUAL RIGHTS OF THE HUSBAND AND WIFE.

Property Rights. Neither a husband nor a wife have any rights in the property of the other except:

1. The husband must support his wife and minor children out of his property or labor.
2. The right to dower.
3. The right to remain in the home after the death of the other.

4. Neither can force the other to leave the family home except upon a decree or order of injunction by a court.

Contracts. A husband or wife may enter into a contract the same as if he or she were single.

Responsibility For The Others Acts. Neither the husband nor the wife is responsible for the acts of the other.

Parental Responsibilities. In Ohio it is provided by law that the husband and wife are the joint and natural guardians of their minor children, and they are equally responsible for the children's care, nuture, welfare, education, and the care and management of their estate. Further, the law in Ohio requires the parents to exercise parental control and authority over their children, and it is also the duty of the parents to protect their children, to care for them, and to do whatever is necessary for their care and maintenance.

III. THE PARENTS AND THEIR CHILDREN.

Liability For A Child's Acts. In Ohio a parent who has custody and control of a minor child under the age of eighteen years who willfully damages someone else's property, may be liable to the owner of such property up to an amount not exceeding three thousand dollars. For example: (O.R.C. ,3109.09)

Joe Doe's son, Tim, age 16, for some unknown reason sets fire to John Jones' new automobile which cost Mr. Jones two thousand dollars. John Jones can sue Joe Doe for two thousand dollars, and collect it from Mr. Doe.

Further, in Ohio, a parent who has custody and control of a minor child under the age of eighteen years who willfully and maliciously assaults another by means of force likely to produce great bodily harm, may be liable to such person in an amount not exceeding two thousand dollars. For example:

Joe Doe's son, Tim, age 16, tries to rob John Jones and in the process shoots Mr. Jones. Under the law in Ohio, Mr. Jones can sue Mr. Doe and collect an amount up to two thousand dollars.

There are two other situations where a parent may be held liable for a child's acts, but in the following two situations the fault really lies with the parents. First, if a parent knows that a child is vicious or demented, and allows that child to get into a position where he or she can injure other persons or property, the parents may be held liable for any injury done by the child. Second, if a parent permits a child to have access to a dangerous instrumentality, such as a gun, which may be used, and is used to cause injury to another, the parent may be held liable for the damage done.

For the most part, in Ohio, the above four situations are the only ones which will render a parent legally liable for his child's acts. Under most other situations, the child may be held legally liable, but the parent will be free of liability.

Right To Punish. Since parents are responsible for the acts of their children, they are given the right to discipline and punish them in a reasonable manner for their misbehavior. Parents who provide a home for a minor child and support it are entitled to the child's respect and obedience. In Ohio this has long been the law. A parent must be careful, however, not to exceed the bounds of moderation, and inflict cruel and merciless punishment. If cruel and merciless punishment is inflicted upon a child, the parent may be subject to criminal prosecution.

Religious Training. As to the religious training of a minor child, the courts in Ohio have no power to order either parent to give the child any particular form of religious or non-religious training.

The Gifts To Minors Act. Under federal law, if a party or parent makes a gift to a minor that gift cannot later be taken away from the minor child. Once a gift has been made to a minor child it is his or her property. The property must be held for the child until the child reaches the age of majority, which in most states is the age of twenty-one years. Examples of gifts which this law was meant to cover are gifts of money, stocks, bonds, securities, real estate, and the like.

An exception to this rule is that a gift may be used by the child's parents for the care and education of the child.

If, when the child reaches the age of majority, and he or she thinks that a gift has been wrongfully used, the child can ask a court to make the party who spent the gift to account for the gift and how it was used. If the gift was wrongfully used, the party who wrongfully used the gift may have to pay the value of the gift to the minor who has become an adult.

IV. MAINTENANCE AND SUPPORT OF THE MINOR CHILD.

Civil Liability. If a parent fails to support and provide the necessities of life for a minor child, and another party so provides, the parents may be sued for the support and necessities furnished the minor child. For example:

Mr. and Mrs. Nogood refuses to take care of and feed their minor child, and a neighbor, Mr. Good, takes the child and clothes, feeds and provides a home for it. Mr. Good may sue Mr. and Mrs. Nogood for the value of the clothes, the food, and for rent furnished the minor child, and collect it.

If the parents of a minor child refuse to take the proper care of a child, the appropriate governmental agency may take the child away from the parents. In Ohio the law provides that if a court finds a minor child to be dependent or

neglected, the child may be made a ward of the Juvenile Court, placed in a foster home or in a children's home.

Criminal Liability. There are several statutes in Ohio which make it a crime for a parent to willfully or negligently fail to support a minor child under the age of 16 or 18 years of age, depending on the statute. Most of the statutes make it only a misdemeanor for failure to support which means the guilty parent would be imprisoned for a year or less. However, one statute in Ohio makes it a felony to fail to provide support for a minor child, which means that a guilty parent could be sent to a state prison for several years.

Even the unborn child is protected in Ohio. Under Ohio law it is a felony to fail to support a pregnant wife, which means a guilty husband could be sent to a state prison for several years. The reasoning behind this statute is that a pregnant wife is unable to work and the proper care has to be given the wife to insure a healthy baby.

The parent who lacks property or earnings for support, or is unable to secure employment, or is physically incapable of working, cannot be found guilty of failing to support a minor child. The failure to support has to be willful or negligent before there can be a conviction for failure to support.

Questions And Problems.

1. Discuss the responsibilities of being a husband.
2. Discuss the responsibilities of being a wife.
3. May a wife enter into a contract without her husband's consent?
4. Is a wife responsible for her husband's acts?
5. Discuss the responsibilities of being a parent.
6. May a parent be held liable for the acts of his or her children? If so, discuss.

7. Discuss the right of a parent to punish his child.

8. Discuss the gifts to minors act.

9. Is a parent required to support his or her minor children?

V. MARTIAL PROBLEMS BETWEEN THE HUSBAND AND THE WIFE.

Introduction. Oftentimes marriages are entered into with the best of intentions and with the necessary ingredients for a happy marriage, but later irreconcilable differences arise between the parties which make the marriage an unhappy one. The law recognizes that problems arise in marriages, and that some people should live separate and apart, and even in some cases that the marriage should be dissolved.

The Separation Agreement. In Ohio the law provides that a marriage relationship cannot be altered by contract, except that the parties to the marriage may agree to an immediate separation and make provisions for support. The separation agreement like any other contract may be enforced in court. The separation agreement is often used in the case where the parties do not want a divorce. A separation agreement provides the parties with an opportunity to live separate and apart without the separation being a grounds for divorce, and it further gives the parties an opportunity to work out their differences.

Alimony. The law in Ohio provides that either party to a marriage may file a petition for alimony. Alimony being support or a division of property for the support of the husband or the wife. Further the law provides that the other party may file a cross-petition for alimony or divorce. A person who does not want to be divorced always runs the risk of the other party cross filing for divorce when an alimony petition is filed.

In Ohio alimony may be granted for the following causes:

1. Adultery.
2. Any gross neglect of duty.
3. Abandonment without good cause.

4. A separation as a result of ill treatment by the adverse party.
5. Habitual drunkenness.
6. Imprisonment of the adverse party in a state or federal penal institution when the petition is filed.

Divorce. Every state in the United States has divorce laws and causes for dissolving a marriage contract. Some state divorce laws are very liberal and a divorce may be obtained with little difficulty, while other states are very strict and have few grounds for divorce. In the strict states very few divorces are granted. Ohio would be considered as being in between very liberal and very strict.

The grounds for divorce in Ohio are: (O.R.C. ,3105.01)

1. If either party had a husband or wife living at the time of the marriage from which the divorce is sought.
2. Willful absence of the adverse party for one year without cause.
3. Adultery.
4. Impotency.
5. Extreme cruelty.
6. Fraudulent contract.
7. Any gross neglect of duty.
8. Habitual drunkenness.
9. Imprisonment of the adverse party in a state or federal penal institution at the time of the filing of the divorce petition.
10. Obtaining a divorce outside of this state by the husband or wife whereby the party that obtained the divorce is released from the obligations of the marriage while such obligations remain binding upon the other party.

Incidents To The Divorce.

Restoration of maiden name. Upon the granting of the divorce, the wife upon request may have her maiden name restored.

Care of minor children. Upon proof of any of the grounds for divorce, the divorce court can make an order for the disposition, care, and maintenance of the minor children of the marriage. However, if a child is fourteen years of age or older, such child may chose the parent it wants to live with, if the parent is fit.

Support. The divorce court may order either or both parents to support their minor children.

Visitation. The divorce court may set visitation for the parent who is deprived of the custody and control of the minor children of the parties.

Alimony. The divorce court may allow alimony as it deems reasonable to either party. Alimony may be in the form of real, or personal property, or both, or the court may order the alimony to be paid in money. The divorce court may order the money to be paid in one lump payment, or it may order the sum paid in installments.

Annulment in Ohio. An annulment destroys the existence of a void or voidable marriage. A divorce action, on the other hand, terminates a once valid relationship. The grounds for annulment in Ohio are: (O.R.C. ,3105.31)

1. Under Age. Unless the party that once under age at the time of the marriage confirms the marriage after reaching majority (18). Action must be brought within 2 years after party reaches majority. It may be brought by the parent of the under age party.

2. A valid existing prior marriage.

3. Where either party has been adjudicated mentally incompetent.

4. Where there was fraudulent consent.

5. Where consent was obtained by force.

6. Where marriage was never consummated. Action must be brought within two years.

A court can grant an annulment for other reasons. An annulment does not affect the legitimacy of the children born of the marriage. (O.R.C. ,3105.61)

No Fault Divorce and No Fault Dissolution. Ohio has a no fault dissolution law. One of the spouses must have been a resident of the state for six months immediately preceding the request. A petition is prepared by an attorney and must have attached to it a separation agreement agreed to by both spouses. The separation agreement must cover:

1. Division of all property;

2. Custody, if there are minor children;

3. Alimony;

4. Child support;

5. Visitation.

Both spouses then appear in court and acknowledge that they entered into the agreement voluntarily, that they are satisfied with the terms of it and want a dissolution.

The parties to a dissolution in Ohio do not have to set forth grounds. The court must approve the agreement.

Abusing The Family Unit - Criminal Liability. In most cities and states, it is a crime for either parent to act in such a manner so as to injure the family unit, or any member thereof.

Any ill treatment of the family unit or member thereof is considered to be an abuse of family. An unusual amount of cursing at the family, the calling of names, the striking of members of the family have all been held to be an abuse of family.

Questions And Problems.

1. What is abuse of family?
2. Name five grounds for divorce in Ohio.
3. Which of the parties to a marriage may obtain alimony in Ohio?
4. Name three grounds for alimony in Ohio.
5. Are there any dangers in filing an alimony petition?
6. What other powers does the divorce court have other than the power to grant a divorce?

VI. THE ILLEGITIMATE CHILD - THE BASTARDY ACTION.

The Bastard Child. A bastard child is one that has been born out of wedlock. To say that a child has no father is ridiculous, but legally speaking the child has no father until there has been a court determination or an acknowledgement of paternity by the father.

The Bastardy Action. The court process for determining whether or not a man is the father of a child is known as the bastardy action. Who files a complaint in bastardy? Only an unmarried woman can file a complaint in bastardy. The reason only an unmarried woman can file a complaint in bastardy is that every child born in wedlock is presumed as a matter of law to be legitimate.

A man who is charged in a bastardy complaint as being the father of a certain child has the right to try and prove that he is not the father if he so believes. Every man has the right to:

1. A preliminary hearing to determine whether or not the woman has grounds to charge the man as being the father of her child. At the preliminary hearing the man has the right to ask the woman questions to find out what her story is in regards to the bastardy complaint. Further, the man can, at the preliminary hearing, request the court for an order for a blood grouping test of all the parties to the bastardy complaint. The blood tests may show that the man could not possibly be the father, and if such is the case the bastardy complaint would be dismissed.
2. To a trial to determine whether or not he is the father. The accused may have the case tried before a jury, or just in front of the judge.

After all the evidence has been presented, the judge or the jury has to determine whether or not the accused man is the father of the child in question.

If it is adjudged that the accused is the father of the bastard child, he will then have to support the child. Even more important than the support is the fact that the child has been legitimatized and can inherit through the father, if the father should leave an estate.

Questions And Problems.

1. What is a bastardy proceeding?
2. Who may file a complaint in bastardy?
3. What are the consequences of a man being adjudged the father of a bastard child?

VII. THE JUVENILE DELINQUENT.

The New Law. In November of 1969 a new law went into effect in Ohio affecting minor children. The purpose of the new law is not to declare every child that has a problem in our community a juvenile delinquent. The term delinquent has taken on a meaning down through the years so that when a person hears the term delinquent it is automatically associated with a very bad person. The new law provides for a new classification of problem children - the unruly child. With an unruly child, the court can obtain jurisdiction over the child and give him guidance without labeling him a juvenile delinquent. An unruly child includes any child:

1. Who does not subject himself to the reasonable control of his parents, teachers, guardians, or custodian, by reason of being wayward or habitually disobedient.
2. Who is an habitual truant from home or school.
3. Who so deports himself as to injure or endanger the health or morals of himself or others.
4. Who attempts to enter the marriage relation without the proper consent.
5. Who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons.
6. Who engages in an occupation prohibited by law, or is in a situation dangerous to life or limb or injurious to the health or morals of himself or others.
7. Who has violated a law applicable only to a child.

A delinquent child in Ohio now includes any child:

1. Who violates any law of this state, the United States, or any ordinance or regulation of a political subdivision of the state which would be a crime if committed by an adult.
2. Who violates any lawful order of the court.

Purpose Of The Juvenile Court. The juvenile court has only the best interest of the child in mind when a child is brought before the court. Any order of the juvenile court is made with the purpose of protecting or furthering the welfare of the child.

Jurisdiction Of The Juvenile Court. The jurisdiction of the juvenile court may be invoked by numerous different parties or agencies - the school, the welfare agency, a complaining party, a police officer, or even the child's parents. If the parents of a child cannot control the child, they can ask the juvenile court for help. Once the parents have asked the court for help, the court will then assist the parents in bringing the child under control.

Questions And Problems.

1. What is the purpose of juvenile court?
2. What is an unruly child?
3. What is a juvenile delinquent?

VIII. A WILL - WHO NEEDS ONE?

What Is A Will? A will is a written declaration of how a person wants his property distributed after he or she is dead. When a person leaves a will, the courts will do everything in their power to see that the intentions of the deceased person are carried out. Through a will, a person can designate who is to share in his or her estate and how much they are to receive.

What If There Is No Will? If a person leaves no will, then state law will determine who will share in the deceased's estate and the portion that they will receive. The distribution of property by law is not always the fairest method, and it could work a hardship on the surviving spouse. For this reason alone a person should have a will.

Who Needs A Will? Anyone who owns personal or real property in excess of one thousand-five-hundred dollars, which includes cash, and lives in Ohio, should have a will. If a person owns personal or real property in excess of one thousand-five-hundred dollars, and dies in Ohio, an estate must be opened for that person if he or she was a resident of Ohio. Usually when there is a will the estate is much easier administered, and the costs will probably be much less as there will be fewer problems in administering the estate.

Of course in larger estates, a considerable tax savings may be had through the use of a will and an orderly distribution of the estate. No one wants to have their life's work go to the government for inheritance taxes.

Who Should Draft A Will? A will is a very technical document and only a person who has experience in drafting wills should write a will for someone. No matter what, do not try to write your own will. It probably will not be valid anyway. Have someone write your will who knows what law applies so that the will will

be valid and your estate will be distributed according to your wishes.

Questions And Problems.

1. What is a will?
2. What happens to a persons property if he or she does not have a will?
3. Who needs a will?

IX. TAXES.

Filing The Return. The single most important fact to remember about taxes is that if you fail to file a tax return you can be imprisoned and fined for tax evasion. If you falsely figure your income tax you can also be imprisoned and fined for tax evasion. You cannot be imprisoned for merely owing taxes. Even if you owe the government taxes, you should go ahead and file your return, for the government will merely bill you for the taxes upon receipt of the return and at that point arrangements can be made to pay what is owed.

Federal Income Taxes. If you are a U. S. citizen or resident your filing, under current 1978 tax law, depends on three factors - your gross income, your marital status, and your age. A single individual must file a return if he or she had gross income of $2,950 or more for the year. The requirement is $3,700 for a person age 65 or older. Married persons must file a tax return if their combined gross income was $4,700 or more, provided they file a joint return and were living together at the close of the tax year. A married person with gross income of $750 must file a tax return if his or her spouse files a separate return. There are certain other categories. If you are in doubt, phone the local IRS office at 621-6281 (Cincinnati) or the general toll free number in Southern Ohio 800/582-1700.

A Joint Or Separate Return. The income tax law provides that a husband and wife may file a joint income tax return if they so choose. It is not mandatory that they file a joint return, but it is usually to their advantage to do so, as they will receive a cheaper tax rate by doing so. Normally if a husband and wife file separate returns, it will cost them more tax. Even if one of the parties had no income, a joint return can still be filed. Of course, in order to file a joint return you must be married.

What Is Taxable Income? All income must be reported on your federal income tax return, including but not limited to the following:

1. Compensation for services, including fees, commissions, tips and similar items.
2. Income derived from business.
3. Gains derived from dealings in property.
4. Interest.
5. Rents.
6. Royalties.
7. Dividends.
8. Alimony and separate maintenance payments.
9. Annuities.
10. Income from life insurance and endowment contracts.
11. Pensions.
12. Income from the discharge of indebtedness.
13. Income from a partnership.
14. Prizes and contest winnings.
15. Baby-sitting fees.

The above is just a partial listing of what is considered to be income. Practically any money that a person receives over expenses is income and has to be reported as income on their income tax return.

Questions And Problems.

1. Who must file an income tax return?
2. Why should a married couple file a joint return?
3. What is income?

PART IX LIABILITY FOR YOUR ACTS

I. Introduction And Definition Of Terms. The law requires a member of society to be responsible for his acts which affect other members of society. Society has set standards through laws as to what is the normal way to act, and the standard of care required of a person in performing certain acts. Failure to act as the average man would do under the same circumstances, or failure to use the standard of care that the average man would have used which results in injury to another person or his property, makes the person so acting negligent and liable for his acts.

In order to fully understand what is meant by liability for your acts, there are a few basic terms that must first be understood:

1. A Tort. For a tort to exist there must be a legal duty owing from one party to another, and there must be a breach of that duty which causes an injury.
2. Negligent. For a party to be negligent, he or she must have failed to do something which the average man would have done, or he or she must have done something that the average man would not have done which results in injury.
3. Contributory Negligence. In the case of contributory negligence both parties are negligent, or both parties have failed to act or did an act that the average man would have or would not have done which results in injury.

II. The Automobile Accident. Everytime there is an automobile accident someone is at fault because automobiles do not smash into each other by themselves. One, or maybe both, of the drivers were not acting the way the average prudent

man would have acted or there would have been no accident. When an automobile accident occurs, someone has been negligent, and when someone is negligent, he or she has to pay for the damage done to all parties involved.

What are some of the acts behind the wheel of an automobile that will make a driver negligent and responsible for an injury caused by the driver's acts? The following is a partial list of negligent acts that will cause a driver of an automobile to be liable if there is an injury because of his or her act:

1. Failure to stop for a stop sign or red light and hitting someone who had the right-of-way.
2. Speeding and being involved in a collision.
3. Passing another vehicle on a yellow line and striking an oncoming vehicle.
4. Crossing left of center and striking an oncoming vehicle.
5. Following another vehicle too closely and being unable to stop when the vehicle in front of you stops.
6. Pulling or backing out into oncoming traffic and being struck by an oncoming vehicle.
7. Driving at a speed greater than weather conditions permit.
8. Passing another vehicle on the right.
9. Operating an automobile while under the influence of intoxicating liquor, drugs, or opiate.
10. In driving an automobile which is in an unroadworthy condition.

The foregoing are just a few examples of acts which are considered to be negligent acts in the operation of a motor vehicle. Anytime a motor vehicle is

not operated in a safe and prudent manner as the average man would have, the driver is negligent.

WHAT SHOULD YOU DO WHEN INVOLVED IN AN AUTOMOBILE ACCIDENT?

1. Never leave the scene of an accident until permitted to do so by the proper authority such as a police officer.
2. Upon being involved in an accident, if anyone is injured an ambulance should be called.
3. After calling the ambulance, if needed, the police should be called to come and investigate the accident so that an official record will be made of what happened.
4. Obtain the names of the other parties involved in the accident, their addresses, their license plate numbers, their driver's license number, and the name of their insurance company if they have insurance.
5. File an accident report with the State of Ohio. The necessary form may be obtained at any police station.

If the foregoing has been done, you will have less problems later.

III. Financial Responsibility And The Automobile Accident. Every user of the highways in Ohio is required to be financially responsible for any damage he or she might do while using the highways. Upon being involved in an accident, each vehicle operator must prove to the State of Ohio that he or she is financially responsible for any damage done, if it is found that he or she is at fault. If a party who has been involved in an accident has liability insurance, it is very easy to prove that he or she is financially responsible, as the insurance company will file a form with the State informing them that the party has insurance to cover the damage if he or she is found to be at fault and

responsible for the damage that was done. If a party does not have liability insurance, then it becomes more difficult to prove or show financial responsibility, and it also becomes more costly. Upon receiving notice that a party who has no insurance has been involved in an accident, the registrar of motor vehicles will determine how much security or the amount of bond that the uninsured party will have to deposit with the State of Ohio. The purpose of the deposit is to insure that the uninsured party will pay for the damage if he or she is at fault. The requirements of the financial responsibility law can be met by having a bonding company file a bond upon behalf of the party who does not have insurance, but this is quite expensive. If a person has other security which is acceptable to the registrar, that security may be filed rather than having a bond filed.

Failure to comply with the provisions of the financial responsibility law will result in the suspension of a person's driving privileges in the State of Ohio. The suspension will continue until there has been a compliance with the financial responsibility law, or the accident is completely settled and all damage has been paid for, or it has been arranged to have the damage paid.

IV. Other Acts For Which A Party Is Responsible. The automobile accident is only one case where a party is responsible for their acts, there are many more. Another area where a person is responsible for his or her acts is when a party makes repairs or builds an item, the workmanship used is suppose to be that of the average workman doing the type of work. Failure to use the proper care in the repair or building of an item which results in an injury may render the workman liable for his careless act. Consider the following two examples:

1. John Jones contracts with George Blue to have a house built according to certain specifications which would require the use of the best and strongest materials. Mr. Blue builds the house and Mr. Jones moves in. Six weeks later the roof falls in on Mr. Jones while he is asleep, injurying Mr. Jones. It is later discovered that Mr. Blue failed to put in the proper supports for the roof which was the reason for the roof falling in. Because of Mr. Blue's failure to perform the work in the average workmanship like manner, he will be liable to Mr. Jones for his injuries including the repair of the house.

2. Suppose Mrs. Sore takes her steam iron to Mr. Fixit to have it fixed because it is generating too much steam. Mr Fixit says he will see that the problem is fixed. Mrs. Sore goes back to get her steam iron and is informed that it has been fixed and is ready for use. Mrs. Sore takes the iron home, and when she starts to use it, the iron explodes scalding Mrs. Sore. It is later determined that Mr. Fixit left something in the iron which would not allow the steam to escape causing the iron to explode. Mr. Fixit is responsible for Mrs. Sore's injuries.

These are just two examples of how defective workmanship may make a workman liable for his acts. There are many more, and it should be remembered - a workman is required to use that measure of care and skill the average prudent workman would have used if he were performing the same task.

V. Willful Acts. There are a certain number of acts called intentional torts which the law requires the party responsible for the act to not only be punished criminally but to be held civilly responsible also. These acts called intentional acts, and there is no question that the party committing the acts intended to cause injury by doing the particular act. Some of the more common

intentional torts are:

1. The Assault and Battery. An assault is an intentional advance towards another creating a fear in the party that he is going to be struck or injured. A battery is the actual striking of another without his or her consent with the purpose of doing harm. Such a willful or intentional act such as an assault or a battery, can result in criminal as well as civil liability. Not only will the person who committed the act be punished, but he or she will have to pay for the injury done.
2. Theft. The theft of an item which is not recovered may render the thief liable both criminally and civilly. Normally a thief is not sued for the item stolen because a thief usually cannot hold a job long enough to have any money collected from him, However, there have been instances where a thief has been sued for the value of the items taken after the thief has been released from jail.
3. Intentional Shooting. If a party intentionally shoots another, he or she may be punished criminally, and also be held civilly liable. Not only will the party doing the shooting have to pay for the shot party's medical bills, but he or she will also have to pay for the party's pain and suffering and loss of wages.

The above examples are only three examples of intentional acts which carry both civil and criminal liability, there are many more. Practically any intentional act which results in injury to another or to another's property will render the party committing the act civilly and criminally liable. It is better to stop and think about your act before committing it, or you may have to pay double for your foolishness.

VI. Do You Own A Dog? In Ohio an owner of a dog is even responsible for the actions of his or her dog. The only question that is to be decided in the case of a dog bite is how much the owner will have to pay the bitten party for his or her injuries. There are two exceptions, however, when an owner of a dog is not responsible for the dog's actions, and they are:

1. If the bitten party is a trespasser on the dog owner's property, or
2. If the bitten party is abusing the dog in some manner.

If you are the owner of a dog, you should make sure your homeowner's insurance policy covers the actions of your dog. Most homeowner's insurance policy will cover a dog if it is specifically requested, but if it is not requested, the homeowner's insurance will not normally cover a dog.

VII. Injuries To Visitors On Your Property. You, as a homeowner or renter, are required to use reasonable care to see that a visitor on your property is not injured. If any dangerous conditions exist on your property which you have knowledge of, you are required to warn a visitor of the dangerous condition so that the visitor will not be injured. A homeowner will not be responsible for any injury caused by a dangerous condition which the homeowner did not know existed.

VIII. Summary. Any actions by an individual which results in an injury to another person or their property will usually render such person liable for the injury if the normal average man would not have acted as such. Any intentional act which was intended to produce injury to another's person or property will probably result in double liability - civil and criminal. Even a dog must be careful how he acts in Ohio, or he will render his master liable for its acts.

Questions And Problems.

1. Why is a party responsible for injuries caused his or her acts?
2. What is a tort?
3. What does being negligent mean?
4. What is contributory neglience?
5. What should you do when involved in an automobile accident?
6. What is the purpose of the financial responsibility law?
7. Who must comply with the financial responsibility law in Ohio?
8. Discuss how the financial responsibility law is complied with.
9. What are the consequences of failing to comply with the financial responsibility law?
10. Name five willful acts that could result in both civil and criminal liability.
11. What warnings are you required to give a visitor on your property?

AFTER HAVING READ THE MATERIALS HEREIN, YOU SHOULD RECOGNIZE WHEN YOU HAVE A LEGAL PROBLEM. DO NOT TRY AND BE YOUR OWN LAWYER. IT IS EASY TO SEE THAT THE RULES SET FORTH IN THIS HANDBOOK ARE COMPLICATED. MANY OF THESE RULES HAVE EXCEPTIONS. REALIZE THIS BOOK IS AN GUIDE TO THE LAYMAN - YOU. IF YOU ARE AWARE FROM READING SOME PART OF THIS HANDBOOK THAT YOU ARE FACED WITH A REAL LIFE LEGAL PROBLEM, SEEK PROFESSIONAL HELP. CALL YOUR OWN ATTORNEY. CALL THE LOCAL BAR ASSOCIATION IF YOU DO NOT HAVE A LAWYER TO SERVE YOU. IF YOU CANNOT AFFORD YOUR OWN ATTORNEY, CALL THE LEGAL AID SOCIETY AND YOU WILL GET HELP.

Additional information that may be helpful.

The Legal Aid Society - Civil Division is now located at 900 Elm Street, Cincinnati. Phone 241-9400. If you need legal aid and cannot afford a private attorney, this office will provide one. The Public Defender's Office is located in the Alms & Doepke Building and will provide legal services for criminal matters to those who cannot afford to retain private counsel.

The following pages contain the names and phone numbers of various organizations that are responsible to provide consumer information in a variety of areas. I have referred to some of them throughout the handbook on the inserts. Often, people will recognize when they have a problem but will not know where to turn for help. This list contains some very helpful information.

THE BRAKES GO OUT ON YOUR NEW CAR.

The Auto Safety Hotling (800-424-9393) handles auto complaints, dealing with auto safety, such as defective parts. If you're about to buy a used Pinto and you want to know if it was ever recalled, the hotline can tell you. During the Firestone tire problem, the hotline handled 6000 calls a week.

YOUR NEW BOX OF CORNFLAKES IS HALF FULL.

Or you open a package of chicken and find that it has two hearts, when your family doesn't eat hearts at all. Or your gas tank, reputed to hold 20 gallons according to your car manual, actually holds 22. The Cincinnati Department of Weights and Measures (352-3135) handles complaints on the old adage, "you should get what you pay for." Not surprisingly, of the department's measurements complaints, deal with gas and groceries. Outside of Cincinnati, call the Hamilton County Department of Weights and Measures (632-8212), the Ohio Department of Weights and Measures (614-866-6361) or the Kentucky Department of Weights and Measures (502-564-4870).

THE CITY'S POTHOLES ARE DRIVING YOU CRAZY.

The Cincinnati Highway Maintenance Department (352-3361) handles any road surface problems, including removing dead animals from the street. Problems outside of Cincinnati should be referred to the appropriate highway maintenance department. Hamilton County's is 761-9191.

THE AIR AT WORK MAY BE HAZARDOUS TO YOUR HEALTH.

The Occupational Safety and Health Administration (684-3784) handles complaints that involve job safety - exposure to unguarded machinery, a potentially toxic material - but only for businesses that affect commerce (most do).

YOU FIND OUT THAT YOU SHOULD BE EARNING THE MINIMUM WAGE.

Or you find out that the part of your salary that was supposed to be going to Blue Cross/Blue Shield isn't. The Department of Labor (Wage and Hour Division) (684-2942) handles salary complaints (but not gripes about how much you're not making).

YOUR NEIGHBOR HAS TRASH ALL OVER HIS YARD.

You want him to clean up, because it's not only an eyesore, but a health hazard. The Cincinnati Board of Health (352-3100) handles sanitation complaints. If your complaint involves a restaurant, call 281-7361 instead. Outside of Cincinnati, call the Hamilton County Board of Health, 632-8457. Each county has its own board of health. Christine D'Andrea at the HCBOH will supply you with the proper/number.

A STORE CLERK SELLS SOMEONE A SIX-PACK FOR FOOD STAMPS.

If you want to report a store that allows a customer to purchase beer, wine or cigarettes for food stamps, call Food and Nutrition (684-3568). This agency also handles complaints on school lunch programs and special nutrition programs for infants and children.

YOU OPEN A BOTTLE OF WINE, AND IT TASTES VINEGARY.

You can call the Department of Liquor Control. (614-466-4305) or write to the department, division of store management, 2323 W. 5th Ave., Columbus, Ohio 43204. If your complaint involves sales to a minor, call 614-466-3625, or write to the enforcement division of the department at the same address.

YOU NEED LAST YEAR'S TAX RETURN AND NO ONE WILL SEND IT.

If you've requested it several times without success or you're having problems dealing with federal taxes, the local Internal Revenue Service (621-6261) can help. For state taxpayer assistance, call 800-282-1780.

YOU FIND SOMETHING BLACK AND HAIRY IN A CAN OF GREEN BEANS.

The local Food and Drug Administration (684-3500) handles unsafe food, drugs or cosmetics. Most of the complaints involve food - a shell in a jar of unshelled peanuts, a cigarette butt in a can of soda pop. One woman opened her prescription drug capsules and found that one capsule had a different colored end from the rest. Another woman found that a shampoo she was using was caustic to her skin.

YOU THINK "THE BEAST" SHOULD BE BANNED.

The Ohio Department of Agriculture (800-282-1955) has an amusement department that takes care of complaints involving amusement parks. But most of the department's complaints involve general complaints about food - labelling problems, unsanitary conditions, bugs in a box of rice, the high fat content in a pound of hamburger. In Kentucky, the number call is 502-564-2200.

YOUR LANDLORD REFUSES TO FIX YOUR SINK.

The Better Housing League (721-6855) handles tenant/landlord problems and problems with buying a house.

A LANDLORD WON'T RENT TO YOU; YOU DON'T KNOW WHY.

Complaints about housing discrimination based on race, religion and national origin should be referred to Federal Housing Discrimination (800-424-8590).

YOU HEAR SOMEONE'S CB THROUGH YOUR TELEVISION SET.

It's a legitimate complaint and the Federal Communications Commission (313-226-6078) can help. The agency address is Rm. 1054, Federal Building, W. Lafayette, Detroit, Michigan 48226.

YOUR LAWYER'S FEE IS TOO HIGH.

The Cincinnati Bar Association (381-8213) will handle your complaint, if you want to file a grievance against a lawyer.

YOU'RE NOT COLLECTING ON A BENEFIT FROM SOCIAL SECURITY.

You want to cut the bureaucratic red tape that involves Social Security or the Veterans Administration. If you live west of Vine St., Tome Luken's office can help (684-2723); if you live east of Vine St., call Bill Gradison's office (684-2456).

YOUR MECHANIC IN KENTUCKY HAS SABOTAGED YOUR CAR.

The Kentucky Consumer Hotline (800-372-2960) or if you're calling from Ohio (502-564-2200) can direct you to the right complaint agency in Kentucky and handle complaints about Kentucky-purchased services. Consumer complaints should be submitted in writing to the Attorney General's Office, Consumer Protection Division, 209 St. Clair, Frankfort, Kentucky 40601.

THE ROOFER JUST FINISHED THE JOB AND THE ROOF IS LEAKING.

Last year, roofing problems ranked among the top 10 complaints compiled by the Better Business Bureau (421-3015). Buyer complaints, among the 4000 they received in writing involved mail order problems, home remodeling problems, problems with auto dealers, dry cleaners, appliance repair, home furnishings and television service. The BBB handles provable disputes involving buyer/seller relationships, non-performance on contracts and the inability to get advertised merchandise from a company.

YOU THINK THAT THE TV REPAIRMAN PUT IN ONE TOO MANY TUBES.

The Bureau of Consumers (352-3971) handles complaints much like a Ralph Nader investigation team. Complaints within the city of Cincinnati limits usually center around deceptive advertising fraudulent sales transactions or some other legal violation of your rights as a consumer. Television and auto repair, home improvement head the list of complaints. Already the Bureau has taken several television shops to court for bogus repair. Theoretically it can also handle complaints on dentists and veterinarians.

REFERRAL CENTERS.

Federal Information Center (684-2801), Community Chest/United Appeal (721-7900) can refer you to the proper complaint agencies.

Cincinnati Experience Consumer Hotline (475-4338)-This hotline, under the auspices of the University of Cincinnati, has a good referral list.

Concerned Consumers of Newport (491-4444)-This new agency will direct you to the proper complaint agency in Northern Kentucky.

YOUR INSURANCE COMPANY WON'T SETTLE YOUR CLAIM.

Any complaints against insurance companies should be referred to the Insurance hotling (800-282-4658). You may also write to the hotline at the Policyholder Service Division, 2100 Stella Ct., Columbus, Ohio 43215.

YOUR NEIGHBORS ARE DUMPING WASTE INTO YOUR CREEK.

The Environmental Protection Agency (800-282-0270) handles complaints on contaminated streams, open burning, any environmental concern.

YOUR DOCTOR CURED YOU OF THE WRONG ILLNESS.

Complaints against doctors can only be issued in writing to the Academy of Medicine, Judicial Committee, 320 Broadway, Cincinnati, Ohio 45202. It will not handle complaints about doctors' fees.

MA BELL IS SOCKING IT TO YOU IN RATES.

If you want to gripe about anything to do with public utilities, call the public utilities hotline (800-282-0198) and it will try to straighten out your complaint. However, you might want to start at the local level, particularly if the complaint involves a bill (see Consumer Bureau).

YOUR NEW BRIGHT RED SHIRT FADES IN THE WASH.

The Federal Trade Commission (216-522-4207) welcomes any complaints and can advise you although it cannot take action on individual complaints. This is the agency to complain about credit discrimination, problems with warranties and guarantees, manufacturers who misinform the public about their product. You can write to the agency at 118 St. Clair St., Suite 500, Mall Building, Cleveland, Ohio 44114. In Kentucky, call 312-353-4423 or write to 55 E. Monroe, Chicago, Illinois 60603.

YOUR POST ISN'T DELIVERED; YOU CAN'T WAIT TO READ IT.

Call the Subscriber Service (352-2900) Monday to Friday, 8:30 a.m. to 7 p.m. Saturday and holidays, 8 a.m. to 1 p.m.

YOU HATE THE POST OFFICE, MAILMEN AND MAIL IN GENERAL.

The Post Office (684-5358) will listen to your complaints and also help trace lost mail, check up on mail orders and assist in complaints about mail box tampering.

YOUR LAUNDRY PRODUCT GAVE YOU A RASH.

The Consumer Product Safety Agency (684-2872) is concerned with the safety of products, other than food, drugs, cosmetics, medical devices, motor vehicles, airplanes, tobacco, alcohol and firearms (handled by other divisions). Common complaints usually involve cellulose insulation, blenders, lawn mowers, bicycles and child-proof caps. The agency helps convince refrigerator manufacturers to use magnets, instead of latches to close refrigerator doors when children kept getting locked inside. The agency handles complaints on toy safety and products that cause allergic reactions. If you want to know what action has been taken with your complaint, you must request it in writing from the Federal Office Building, 550 Main St., Suite 3031, Cincinnati, Ohio 45202.

YOUR MECHANIC IN OHIO HAS SABOTAGED YOUR CAR.

The Ohio Consumer Public Action Line (800-282-0515) handles complaints almost anything you purchase or on a service for personal, family or household use. Thirty-five percent of the complaints are about autos and mechanics. The agency also assisted a Cincinnatian in getting a refund on his slipping denture.